

*United States Court of Appeals  
for the Second Circuit*



**APPENDIX**



*Copy w/ affidavit of  
Mailings*

**75-2099**

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**United States Court of Appeals**

**FOR THE SECOND CIRCUIT**

**Docket No. 75-2099**

*B  
PLS*

UNITED STATES OF AMERICA,  
*Appellee,*  
*—against—*

WILLIAM ROVENDRO,  
*Appellant.*

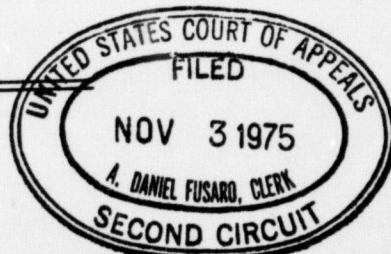
ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NEW YORK

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**GOVERNMENT'S APPENDIX**

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DAVID G. TRAGER,  
*United States Attorney,*  
*Eastern District of New York.*



**PAGINATION AS IN ORIGINAL COPY**

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\* The petition is reprinted in appellant's appendix at 1-B-8-B.

No. 100  
FINAL DOCKET

71 CR 1147 A 1 RAYFIELD, J.

| TITLE OF CASE                                             | <del>CLASSIFIED</del> | ATTORNEYS                                                                      |
|-----------------------------------------------------------|-----------------------|--------------------------------------------------------------------------------|
| THE UNITED STATES                                         |                       | For U. S. xxxdefts ROVENDRO & ESPINOSA;                                        |
| vs.                                                       |                       |                                                                                |
| WILLIAM ROVENDRO, CHRISTOPER<br>ESPINOSA and WILLIAM ROWE |                       | Martin Light<br>66 Court St.<br>Brooklyn, N.Y.<br>834-8888                     |
|                                                           |                       | For Defendant: ROWE:<br>Mark Landsman<br>66 Court St., Bklyn, N.Y.<br>875-9440 |
| Theft of stolen m/v in i.c.c.                             |                       |                                                                                |

PROCEEDINGS

-71 Before Mishler, Ch J - Indictment filed.  
15/71 Magistrate's file 71 M-1443 inserted in criminal file.  
15/71 J. T. C. - Defts present with counsels - Defts arraigned and each deft arraigned and enters a plea of not guilty -  
Bail continued.  
1 Notice of Appearance filed (ROWE)  
71 Notice of Appearance filed(defts, ROVENDRO & ESPINOSA)  
17/71 Motion for Trial on Venus Corpus Ad Prosequendum filed as to CHRISTIAN  
MORAN, WILLIAM GORDON & JILLIAN TATE.  
17/71 by MURKIN, M.J. - Writs issued returnable 4-17-72.  
17/71 Before SAYPOL, J - Case called - Defts & counsels present -  
Defts moved to dismiss the indictment as double jeopardy, defts  
stated they were not yet in state. Court held that if sufficient

## PROCEEDINGS

prejudice to renewal upon formal papers - trial adjd without date pending such motion.

Writs returned & filed/executed.

Petition for Writ of Habeas Corpus Ad Prosequendum filed. (ROVENDRO and (ESPINOSA)

By RAYFIEL, J.- Writ issued, ret. 4/2/73.

Before RAYFIEL, J.- Case called Defts and counsel present- All defts arr and after being advised of their rights by the court and on their own right enter pleas of guilty to ct. 1-Bail , if any continued.

Writs retd and filed. Executed. (R ESPINOSA)

Petition for Writ of Habeas Corpus Ad Prosequendum filed (ROVENDRO)

By RAYFIEL, J.- Writ issued , ret. 6/15/73 . (ROVENDRO)

Before RAYFIEL, J.- Case called- Defts all present with counsel-Deft ROVENDRO makes motion to withdraw guilty plea and re-enter a plea of not guilty-Motion denied-Deft sentenced to 3 yrs. imprisonment under 18:4208(a) to run consecutively with present state sentence.-Deft ROWE sentenced to imprisonment under 18:4208(a)(2) for 2 years-Deft ESPINOSA makes motion to withdraw guilty plea and re-enter a plea of not guilty Motion denied Deft sentenced to 3 yrs. imprisonment under 18:4208(a)(2)-to run consecutively present state sentence.

Judgment and Commitments filed. Copies sent to the Marshal. )(all three defts)

Letter for Compensation of counsel filed. -(ROWE)

Judgment and commitment retd and filed. Deft del. to Fed. Det. Hds. (ROWE ROVENDRO)

Writ retd and filed. Executed (ROVENDRO)

Notice of Appeal filed without fee (ROVENDRO & ESPINOSA)

Docket entries and duplicate of Notice of Appeal mailed to C of A

Writ retd and filed. Executed. (ESPINOSA)

Stenographers Transcript dated 6/15/73 filed

Certified copy of Judgment and Commitment retd and filed- Deft delivered to Federal Prison Camp at Maxwell A.F.B., A.C.A.

Letter dated 10/12/73 filed- re: Christopher Espinosa, and change of address to be recorded with affidavit of forma pauperis, etc.

Letter for Expert Services filed (both defts)

Stenographers Transcript dated April 12, 1973 filed

| DATE  | PROCEEDINGS                                                                                                                                                                              |
|-------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1/73  | Before RAYFIEL, J. - Case called- Defts not present-Counsel present- Deft's motion for setting of bail pending appeal-Bail set at \$10,000 surety bond as to both defts                  |
| -74   | Petition for writ of habeas corpus ad prosequendum filed (ESPINOZA)                                                                                                                      |
| -74   | By RAYFIEL, J. - Writ issued, ret. 1-14-74 (ESPINOZA)                                                                                                                                    |
| 1-74  | BY RAYFIEL, J. - Order filed that deft ESPINOSA be released upon the posting of a \$10,000 surety bond pending his appeal.                                                               |
| 15-74 | Writ retd and filed- Deft released on bail (ESPINOSA)                                                                                                                                    |
| 4-74  | Petition for writ of habeas corpus ad prosequendum filed (ROVENDRO)                                                                                                                      |
| 4-74  | By DOOLING, J. - Writ issued ret. 4-5-74 (ROVENDRO)                                                                                                                                      |
| -74   | By RAYFIEL, J. - Order filed that the deft Rovendro be released from the custody of the Warden, Federal Detention Headquarters upon the posting of a \$10,000 surety Bond pending appeal |
| 3-74  | Order received from court of appeals and filed that record be docketed on or before 4-10-74 (ROVENDRO AND EXPINOSA)                                                                      |
| 4-74  | Certified copy of Judgment and Commitment retd and filed- deft delivered to Federal Detention Headquarters (ROWNDRO)                                                                     |
| )-74  | Writ retd and filed- deft bail out on 10,000 surety bond pending appeal (ROVENDRO)                                                                                                       |
| 7-74  | Magistrate's files 74 M 102 and 515 inserted into CR file.                                                                                                                               |
| 2-74  | Order received from the C of A that the Index to Record be docketed on or before May 31, 1974.                                                                                           |
| 7-74  | Voucher for compensation of counsel filed (Marvin Preminger Esq)                                                                                                                         |

EJB:VJF:rb  
F. #717236

A 4  
**71 CR 1147**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----x NOV 9 1971

UNITED STATES OF AMERICA

-against-

WILLIAM ROVENDRO, CHRISTOPHER  
ESPINOSA and WILLIAM ROWE,

INDICTMENT

Cr. No. \_\_\_\_\_

(Title 18, U.S.C.  
§2313 and §2)

Defendants.

-----x  
THE GRAND JURY CHARGES:

On or about and between the 14th day of February,  
1971, and the 1st day of April, 1971, both dates being approxi-  
mate and inclusive, within the Eastern District of New York,  
the defendants WILLIAM ROVENDRO, CHRISTOPHER ESPINOSA and  
WILLIAM ROWE did knowingly, wilfully and unlawfully receive a  
stolen 1968 Buick automobile, PVIN No. 4443781113765 and  
TVIN No. 443781120269, which had been transported in interstate  
commerce from Woodbridge Township, New Jersey to Queens, New  
York, the defendants WILLIAM ROVENDRO, CHRISTOPHER ESPINOSA  
and WILLIAM ROWE knowing the same to have been stolen.  
(Title 18, United States Code, §2312 and §2).

A TRUE BILL.

-----  
FOREMAN.

ROBERT W. KORGE  
United States Attorney

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

A 5

NOTICE OF APPEARANCE

DOCKET NUMBER 71 CR 1147

-----X  
United States of America

William Rovner  
Christopher Espinosa

(please print)

DATED: Dec 2, 1971

DATE OF ARREST: 10/13/71

PLEASE TAKE NOTICE, that I have been retained by William Rovner

Christopher Espinosa, defendant above named.  
(please print)

I was admitted to practice in this District on \_\_\_\_\_

SIGNATURE B. Martin Light

MARTIN LIGHT

(please print)

OFFICE ADDRESS 66 Court St Brooklyn, N.Y.

OFFICE TELEPHONE 834-8888

(If defendant's counsel is a member of a law firm, indicate member thereof who is to try this case and whose professional engagements are to be considered in any application for adjournment.)

TO: United States Attorney  
Original filed in Clerk's Office

LEWIS ORGEL  
CLERK

BY: William G. Waller  
United States Deputy Clerk

DATE: Dec 2, 1971

**UNITED STATES DISTRICT COURT**

**EASTERN DISTRICT OF NEW YORK**

5 UNITED STATES OF AMERICA,

6 - against - : 71 CR 1147

7 WILLIAM ROVENDRO, CHRISTOPHER  
ESPINOZA and WILLIAM ROWE,

**Defendants.**

3

**United States Courthouse  
Brooklyn, New York**

April 17, 1972  
10:00 o'clock a.m.

### **Before:**

HONORABLE LEO F. RAYFIEL, U. S. D. J.

MICHAEL PICOZZI  
OFFICIAL COURT REPORTER

## 2 A P P E A R A N C E S :

3 ROBERT A. MORSE, ESQ.,  
4 United States Attorney for the  
Eastern District of New York

5 BY: VINCENT J. FAVORITO, ESQ.,  
6 Assistant United States Attorney

7 MARTIN LIGHT, ESQ.,  
8 Attorney for Defendants  
ROVENDRO and ESPINOSA

10 MARK LANDSMAN, ESQ.,  
11 Attorney for Defendant Rowe.

12 \* \* \* \*

ss 1 THE CLERK: United States against Rovendro.

2 MR. FAVORITO: Good morning, your Honor.

3 MR. LIGHT: Good morning, your Honor.

4 MR. FAVORITO: The government is ready, your  
5 Honor.

6 MR. LIGHT: The first application that I would  
7 make is I represented the defendants Rovendro and  
8 Espinosa in a State case in a State matter. In fact  
9 I was representing them in Queens on this identical  
10 charge when they were arrested which was a week after  
11 they already pled guilty to this charge. I handled  
12 the arraignment.

13 THE COURT: How long ago was that?

14 MR. LIGHT: I believe in October.

15 THE COURT: Are they serving a sentence under  
16 that now?

17 MR. LIGHT: Yes. At that time I wasn't re-  
18 tained or hadn't received any money to represent them  
19 in the Federal case. However, I represented them in  
20 the State so I took the arraignment before the  
21 magistrate. I was under the impression they wouldn't  
22 be charged or the government wouldn't go ahead being  
23 they took a plea of stealing the car in Queens and  
24 got time in jail.

25 However, evidently I must have been misinformed

1 and we are here today.

2 I ask your Honor to consider having me appointed  
3 because there is no chance to receive any money from  
4 them. I never did receive any and what I did in the  
5 past I guess --

6 THE COURT: What is your application? You  
7 want me to pass upon the question of double jeopardy  
8 at this time?

9 MR. LIGHT: No. That would be within the  
10 next few minutes.

11 THE COURT: Will I have to wait that long?

12 MR. LIGHT: I want to know if I can get  
13 appointed to represent them.

14 THE COURT: If they are indigent, which very  
15 well may be the fact, and they are qualified for  
16 representation by assigned counsel, certainly I will  
17 do that.

18 MR. LIGHT: I believe their wives and family  
19 are on welfare.

20 THE COURT: That would seem to indicate that  
21 they are without moneys to engage counsel, or he is --

22 MR. LIGHT: Mr. Rovendro and Mr. Espinosa.

23 THE COURT: I will assign you to represent  
24 them before this Court.

25 MR. LIGHT: Yes. Now that I am their attorney,

1 under assignment, I think Mr. Landsman and I would  
2 make a motion or bring it to the Court's attention  
3 about a possible double jeopardy in that -- I have  
4 the complaint from the Criminal Court of New York  
5 County of Queens which charges the three defendants  
6 on April 1st, 1971 at or about 5:30 a.m. at a parking  
7 lot, Parking Lot 3 at JFK Airport, that the three of  
8 them were charged with stealing -- criminal possess-  
9 ion of stolen property. The other charge possibly  
10 may have been burglary tools. And there --

11 THE COURT: Burglary?

12 MR. LIGHT: Burglary tools. I don't have the  
13 breakdown. All I have is the section. They are  
14 charged with grand larceny and criminal possession.  
15 That is in possession of a 1968 Buick which is  
16 identical to the one in the indictment that we have  
17 before you this morning.

18 THE COURT: Now that you have been assigned  
19 to represent them by the Court, I am going to ask  
20 you to make formal motions to the United States  
21 Attorney to dismiss the indictment in this Court on  
22 the grounds that the State has prosecuted and any  
23 such amplification you find necessary and proper.

24 MR. FAVORITO: I would oppose it on the  
25 grounds of double jeopardy.

A 11

pared to act on that now, I am sure the government wants to check into it to see if the charges against them were related to their plea of guilty and their present confinement was for the same offense.

MR. FAVORITO: It wouldn't be the same offense.  
The indictment of this Court charges them with  
transportation in interstate commerce.

MR. LIGHT: I think Mr. Favorito --

THE COURT: That is drawing it quite thin, I think, and rather tenuous. That's why I asked that a formal motion be made and I will consider it and pass upon it.

MR. FAVORITO: First of all, for the record, I was not aware that they were sentenced. I was not aware of the disposition that was pending at that time. I was aware of the fact they were arrested and not aware of the fact they were sentenced or what the sentence was.

THE COURT: If the charge against them in the State Court was possession of burglars' tools and that is all that they were charged with, of course that is not the same.

MR. LIGHT: They were charged with stealing the car. I remember at the time of the arraignment in the

1 Court on the second floor I stated to the magistrate  
2 that they pled guilty before the Judge in the State  
3 Court the week before they were arrested. They were  
4 arrested by the government eight months after the  
5 Queens case. Eight months after the Queens case  
6 they were first arrested by the government. And they  
7 pleaded guilty.

8 MR. LANDSMAN: I might add, I am assigned to  
9 the defendant Rowe, I might add that the identifica-  
10 tion number of the car is exactly the same in both  
11 complaints.

12 THE COURT: What was the charge against them?  
13 If the charge was possession of a stolen automobile  
14 it may very well be there is substantial merit in  
15 the claim that proceeding against them in this Court  
16 on the charge against them here would be double  
17 jeopardy. Prepare your motion papers and memoranda  
18 of law. It is a rather unusual situation. And of  
19 course serve your notice of motion and the accompany-  
20 ing papers on the United States Attorney and I  
21 expect to hear argument on it and pass upon it.

22 MR. LIGHT: May I just make one point to the  
23 Court which may alleviate everything? I enjoy having  
24 to go to the books and writing memoranda of law, but  
25 I have reasons to believe that the -- the defendants

1 seem to have told me that the same arresting officer  
2 that arrested them in Queens for the same car they  
3 are indicted for is in this Court.

4 THE COURT: We don't decide cases such as this  
5 by statements made in open Court by someone.

6 MR. LIGHT: If Mr. Favorito would speak to  
7 the arresting officer --

8 THE COURT: Serve your motion papers. You can  
9 do no less than that and prepare a memorandum of law.

10 MR. LANDSMAN: We thought we might convince  
11 Mr. Favorito to go along with my motion.

12 THE COURT: If you can manage to do that, I  
13 will hear an application by the government. That is  
14 if you succeed.

15 MR. FAVORITO: The government is prepared to  
16 go to trial this morning.

17 THE COURT: I suggest that you look into it.

18 MR. FAVORITO: I have been waiting for motion  
19 papers for some time and haven't received them up  
20 to this day.

21 THE COURT: Shall we enter a plea of not guilty  
22 on behalf of the defendants?

23 MR. LIGHT: Yes sir. How much time would  
24 your Honor --

25 THE COURT: Do it as promptly as you can. You

1 expect the Court to pass upon it within a few  
2 minutes, as I believe you said --

3 MR. LIGHT: I am trying to look out for the  
4 defendants' benefit. They are under sentence and  
5 presently in Sing Sing Prison.

6 THE COURT: They are not being prejudiced in  
7 any way if they are confined under the State Court  
8 sentence now. Which you say is for a crime which  
9 would make the charge here double jeopardy.

10 Prepare your papers.

11 MR. LIGHT: Would the defendants still be in  
12 the custody of the marshals at West Street or returned  
13 to Sing Sing? This is one of their major concerns.

14 THE COURT: Why is that a concern?

15 MR. LIGHT: They told me this morning they are  
16 up at Sing Sing and they are going through certain  
17 classifications and they would rather be up in Sing  
18 Sing making progress rather than at West Street.

19 THE COURT: They should be returned until  
20 after you have made your motion. In the event they  
21 make parole --

22 MR. LIGHT: They just went in, they won't  
23 be out until '74.

24 MR. FAVORITO: I am prepared to proceed to  
25 trial and I brought the owner of the motor vehicle. I

1 would like to dispose of that testimony. Maybe we  
2 can enter into a stipulation.

3 THE COURT: You say the government is ready to  
4 proceed to trial?

5 MR. FAVORITO: Yes.

6 THE COURT: I have received the usual statement  
7 of readiness.

8 THE CLERK: We had it ready for trial, your  
9 Honor.

10 THE COURT: Make your motion.

11 THE CLERK: They are to be returned to their  
12 place of confinement, your Honor?

13 THE COURT: Yes.

14 MR. FAVORITO: This matter has been adjourned?

15 THE CLERK: Talk to counsel about the stipula-  
16 tion.

17 THE COURT: I suggest that you affix to your  
18 motion papers certified copies of the proceedings in  
19 the State Court.

20 MR. FAVORITO: The government would appreciate  
21 that.

22 MR. LIGHT: Absolutely, your Honor.

23 \* \* \* \*

24

25

Martin Light  
Attorney at Law

A 16

May 4 1972  
FBI - NEW YORK  
SEARCHED SERIALIZED INDEXED

717236  
834-8888  
Favorito  
Tower Suite  
66 Court Street  
Brooklyn, N.Y. 11201

May 3, 1972

Robert Morse, Esq.  
United States Attorney  
Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, New York 11201

Att: Vincent J. Favorito, Esq.  
Assistant U.S. Attorney

Re: United States of America

v.

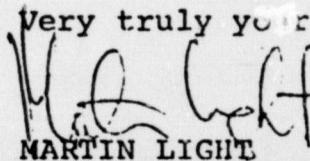
William Rovendro, Christopher  
Espinosa and William Rowe  
71 CR 1147

Dear Mr. Favorito:

Pursuant to our conversation, enclosed please find three extracts from the Supreme Court, Queens County in regard to the above named defendants. As you can see from the transcripts, each defendant pleaded guilty on September 30, 1971 to criminal possession of stolen property in the second degree, a felony and on January 28, 1972, they were sentenced to one year in jail.

I might add that all three defendants also pleaded guilty in the Supreme Court, Richmond County to other stolen car cases and the defendants Rovendro and Espinosa received three year sentences and the defendant Rowe received one year.

If you have any questions, please give me a call.

Very truly yours,  
  
MARTIN LIGHT

ML/i  
Encs.

SUPREME COURT, QUEENS COUNTY

CRIMINAL TERM

125-01 Queens Boulevard,  
Kew Gardens, N.Y. 11415

April 18 1972

CLERK'S OFFICE.....19....

Indictment No. 2347-71 (Q6989/22/95)

E PEOPLE OF THE STATE OF NEW YORK:

against : Filed: Aug 5 1971  
WILLIAM ROVENDRO :

Defendant :

I DO CERTIFY that it appears from an examination of the Records file in this office that the defendant was

Indicted for Grand Larceny 2nd Degree

Criminal Possession Stolen Property 1st Degree

Illegal Possession Vehicle Identification Number Plate

Criminal Possession Forged Instrument 2nd Degree (2cts)

Unauthorized Use of Vehicle (2cts)

Possession Burglar's Tools

September 30 71  
That on.....19.....the defendant was convicted  
the crime of.....Criminal Possession of Stolen Property 2nd Degree  
.....  
.....  
on his own confession and plea of guilty.

~~Defendant was found guilty~~

~~Defendant was sentenced by the Court to one year in the State Prison~~

January 28 1972  
That on.....19.....upon the aforesaid conviction,  
ALBERT H BOSCH  
e Honorable.....  
Justice of this Court, sentenced the defendant to.....  
N.Y. City Correctional Institution for 1 year  
.....  
.....

A TRUE EXTRACT FROM THE MINUTES.

Clerk of Court

*John J. S. wants  
JW*

TEL : 520-3444

SUPREME COURT, QUEENS COUNTY

CRIMINAL TERM

125-01 Queens Boulevard,  
Kew Gardens, N.Y. 11415

April 18 1972

CLERK'S OFFICE.....19....

Indictment No. 2347-71 (Q6990/93/96)

THE PEOPLE OF THE STATE OF NEW YORK:

against  
CHRISTOPHER ESPINOSA

Filed: Aug 5 1971

Defendant

I DO CERTIFY that it appears from an examination of the records file in this office that the defendant was

Indicted for Grand Larceny 2nd Degree  
Criminal Possession Stolen Property 1st Degree  
Illegal Possession Vehicle Identification Number Plate  
Criminal Possession Forged Instrument 2nd Degree (2cts)  
Unauthorized Use of Vehicle (2cts)  
Possession Burglar's Tools

September 30 71  
That on.....19.....the defendant was convicted  
Criminal Possession of Stolen Property 2nd Degree  
the crime of.....  
.....  
.....  
on his own confession and plea of guilty.

X ~~dictio~~xxxi~~xxxi~~xxx

~~Opinion of the Court at the time of trial~~xxxx

January 28 1972  
That on.....19.....upon the aforesaid conviction,  
ALBERT H BOSCH  
Honorable.....  
Justice of this Court, sentenced the defendant to.....  
N.Y. City Correctional Institution for 1 year  
.....  
.....

A TRUE EXTRACT FROM THE MINUTES.

Clerk of Court

*John J. D'Amato*  
JW

SUPREME COURT, QUEENS COUNTY

CRIMINAL TERM

125-01 Queens Boulevard,  
Kew Gardens, N.Y. 11415

April 18 1972  
CLERK'S OFFICE.....19....

dictment No. 2347-71 (Q6988/91/94)

THE PEOPLE OF THE STATE OF NEW YORK:

against : Filed: Aug 5 1971  
WILLIAM ROWE :  
Defendant :  
530

I DO CERTIFY that it appears from an examination of the Records  
file in this office that the defendant was

Indicted for Grand Larceny 2nd Degree  
Criminal Possession Stolen Property 1st Degree  
Illegal Possession Vehicle Identification Plate  
Criminal Possession Forged Instrument 2nd Degree (2cts)  
Unauthorized Use of Vehicle (2cts)  
Possession Burglar's Tools

That on September 30 1971.....the defendant was convicted  
the crime of.....Criminal Possession Stolen Property 2nd Degree.....  
.....  
.....  
on his own confession and plea of guilty.

~~Verdict of jury~~

~~Decision of the Court after a non-jury trial.~~

That on January 28 1972.....upon the aforesaid conviction,  
Honorable ALBERT H BOSCH  
Justice of this Court, sentenced the defendant to.....  
N.Y. City Correctional Institution 1 year  
.....  
.....

A TRUE EXTRACT FROM THE MINUTES.

Clerk of Court

*John J. D'arante Jr.*

1 UNITED STATES DISTRICT COURT

2 EASTERN DISTRICT OF NEW YORK

4 -----X  
5 UNITED STATES OF AMERICA, :  
6 Plaintiff, :  
7 -against- : 71-CR-1147

8 WILLIAM FOVENDRO, CHRISTOPHER :  
9 ESPINOSA and WILLIAM ROWE, :  
10 Defendants.  
11 -----X

12 United States Courthouse  
13 Brooklyn, New York

14 April 2, 1973  
15 10:00 A.M.

16 Before :

17 HON. LEO F. RAYFIELD,

18 U.S.D.J.

20  
21  
22  
23  
24 JOSEPH BARRELLA  
25 Official Court Reporter

## 2 Appearances:

3  
4 ROBERT A. MORSE  
United States Attorney  
Eastern District of New York  
5

6 By: MISS JOAN O'FRIEN  
Assistant United Stat s Attorney  
7

8 MARVIN PREMINCER, ESQ.  
Attorney for Rovendro and Espinosa  
9

10 MARK LANDSMAN, ESQ.  
Attorney for Fove  
11

12 \* \* \*

13  
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(The following took place in chambers.)

THE COURT: (Addressing Reporter)

Suppose you first get the appearances.

I would like counsel to state whom

they represent.

I believe you represent two of the defendants now. What are their names?

MR. PREWINGER: Rovendro and Espinosa.

THE COURT: I see.

And you, sir?

MR. LANDSMAN: Mark A. Landsman.

I represent the defendant Rowe.

William Powe.

THE COURT: You have been here all morning.

MR. LANDSMAN: I have, your Honor.

THE COURT: And I want to compliment you  
on your patience and fortitude.

MR. LANDSMAN: Thank you, sir.

THE COURT: Which I share, but my modesty prevents me from dwelling on it at any great length, mindful and consistent with the recent opinion by the Chief Justice of the United States Supreme Court, and I thought that this -- on the basis of what I know about this case, may lend

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4

1 itself to some disposition. I am not inviting  
2 it and I am making no promises of any kind or  
3 nature whatsoever. It's my feeling in the  
4 matter of sentence -- apart from the fact that  
5 I understand that all three -- but at least two  
6 of the defendants are presently confined in the  
7 State Court.

8  
9 MR. PREMINER: My two clients.

10 THE COURT: In a state institution.

11 MR. PREMINER: Yes. Sing Sing.

12 Rovendro and Espinosa are both still  
13 in jail.

14 THE COURT: Yes. And that the sentence  
15 imposed upon them were five years in prison.

16 Is that correct?

17 MR. PREMINER: No, Judge. It was --  
18 they are serving sentences for -- in this case  
19 it was one year. And they have already served  
20 their time. They are now on a -- I think they  
21 got one, one and three.

22 MR. LANDSMAN: One, three, three, to  
23 serve concurrently.

24 THE COURT: Well then, the criminal code --  
25 they have added some type of punishment with

which we are not familiar - - there's been a recent change. But, in any event, they are confined.

MR. PREMINGER: Yes.

MR. LANDSMAN: Well, you see, your Honor, what happened was simply this. They all three pleaded to felonies in the State Court. E Felony.

THE COURT: A particular - -

MR. LANDSMAN: An E Felony, which is the lowest class of felonies. And based on those pleas the court sentenced them to one year in prison each.

Now, Rowe, my client, did ten and a half months of his year and he is now out.

THE COURT: On parole?

MR. LANDSMAN: Well, I think he's out - - finished. He got time off for good behavior. The ten and a half months is practically the time. Rovendro and Espinosa have done their year on this and they are still in jail on other crimes that they have been sentenced on. But all three pleaded to felonies and were sentenced and served their time on - - you know, on this very situation.

2 THE COURT: Is there anything specific  
3 about the duration of the remainder of the  
4 punishment?

5 MR. LANDSMAN: Rovendro and Espinosa - -  
6 well, as I understand it, there were other  
7 crimes that they were charged with having  
8 nothing to do with this - - which they were  
9 sentenced on. The sentence is to run concurrently.  
10 They were given, as far as I know, three years on  
11 one and three years on another, and one year on  
12 this, all to serve consecutively. They are part-  
13 way through their three-year sentence.

14 THE COURT: Is their background - - is  
15 their criminal background limited to those matters  
16 you refer to or do they have other criminal records?

17 MR. LANDSMAN: Well, I can't speak for  
18 Rovendro and Espinosa. They are not angels.  
19 They have records.

20 Powe, I think, has a one prior felony  
21 back in '63. But I think - -

22 THE COURT: '53?

23 MR. LANDSMAN: '63.

24 MISS O'BRIEN: Your Honor, I have their  
25 arrest records here.

1 MR. LANDSMAN: The U.S. Attorney - -

2 THE COURT: As you gentlemen must know,  
3 Section 659, which is somewhat similar to the  
4 crime charged in 2312 - - except that it's  
5 confined to documents, but does involve interstate,  
6 of course, charges an offense similar to the  
7 offense - - the State Court offense involved in  
8 this very case except for the fact that this - -  
9 the State Court case probably charges possession  
10 of goods known to have been stolen.

11 MR. LANDSMAN: That's it.

12 THE COURT: Without regard to whether  
13 they were moving in interstate commerce or not.

14 MR. LANDSMAN: Right. We understand the  
15 difference.

16 THE COURT: 659 of Title 18 of the code  
17 specifically provides - - and, incidentally, the  
18 statute is considerably longer than 2312 for a  
19 number of reasons - - specifically provides that  
20 if the same acts charged in 659 or the same chief  
21 act, let's call it, is charged in a State Court  
22 action and there is a conviction and punishment,  
23 that that is a bar to prosecution in the Federal  
24 Court.

That's not true of 2312, although it would seem on the face of it that perhaps it should be. But the U.S. Supreme Court found otherwise. And probably because of the fact that it was designed to focus attention on material that was stolen or possessed with knowledge of its stolen character while moving in or which had moved in interstate and foreign commerce.

For that reason it occurred to me that perhaps I might be in a position, without making any promises or guarantees of any kind or nature whatsoever, that I would -- and this I do promise -- take into serious account the fact that the act charged was similar in character and nature and actually involved the particular item or items which are charged with having been involved in 2312 as against these three defendants.

And I thought that if you hadn't talked to your clients about this -- I am addressing myself to both of you -- that you might want to talk to them about it without giving them any more assurances than I have given you and without giving any specific promises about concurrence of

1 sentence, for one reason among others, that  
2 it would be very difficult to do it in this  
3 case anyhow because the tenure -- not the  
4 tenure, but the length of the sentence that  
5 those two are now serving is in limbo,  
6 indefinite.

7  
8 MR. PREMINER: I am not so sure because  
9 they were sentenced -- my clients were sentenced  
10 -- Rovendro concurrently of three, three, one.  
11 I don't know which year they served first,  
12 whether they served the three first and then the  
13 one, or the one first and then the three. It was  
14 concurrent sentences that they are serving now of  
15 -- which these facts constitute one year to be  
16 served concurrently with two other three-year  
17 sentences.

18 THE COURT: If they are to be served  
19 concurrently, their total cannot be any higher  
20 total than three.

21 MR. PREMINER: They still have about  
22 two years.

23 THE COURT: But I am concerned -- and  
24 this is the reason why I say I make no promises --  
25 I am concerned with the fact that that may be

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1 taken by the New York State Parole Board  
2 which - - whose powers and privileges - - and,  
3 incidentally, I understand they have exercised  
4 - - their actions have been liberalized con-  
5 siderably in the last few years. Now, you  
6 gentlemen may know more about it because your  
7 practice in the State Court is quite extensive,  
8 I understand. I don't know when the three years  
9 would be up even if they served all of it less  
10 good behavior.

11  
12 MR. LANDSMAN: Well, of course, your  
13 Honor, that applies to Mr. Preminger's two  
14 clients. My man has already served his time.  
15 He's out. He's finished. He did ten and a  
16 half months of a 12-month sentence. He's not  
17 on parole. He's paid his debt to society and  
18 he's out. So there would be no question of  
19 any concurrent sentence with him.

20 THE COURT: That's right. I didn't know  
21 that until you told it to me.

22 MR. LANDSMAN: Of course, that's some-  
23 thing for me - - I am sure that you know he  
24 will be in when I discuss what your Honor  
25 suggests.

1 THE COURT: When you say they are no  
2 angels - - and I wasn't ready to characterize  
3 them as angels in any event - -

4 MR. PREMINER: May I see that?

5 THE COURT: How about your client  
6 particularly, without referring to all three  
7 of them?

8 MISS O'BRIEN: Your Honor, we do have  
9 the arrest sheet. This is Mr. Rowe's.

10 MR. LANDSMAN: That's my client, your  
11 Honor.

12 THE COURT: They have a tendency of  
13 repeating here.

14 MISS O'BRIEN: Yes, your Honor.

15 THE COURT: In these forms.

16 MR. LANDSMAN: You have to watch the date.

17 THE COURT: Yes, I know. Which is the  
18 one - - I see this William Rowe, 4/29/66.

19 Can't be the one. Sing Sing Prison, one to two  
20 years.

21 MR. LANDSMAN: That would be the felony,  
22 the prior felony that I mentioned.

23 THE COURT: I see.

24 MR. LANDSMAN: The rest should be all

1                   misdemeanors.

2                   THE COURT: All misdemeanors?

3                   MR. LANDSMAN: Up until the Queens  
4                   plea, which is the one he did time on. I  
5                   don't know when this rap sheet was gotten.  
6                   It may have been when they were indicted or  
7                   arrested.

8                   MISS O'BRIEN: It should contain the  
9                   Queens arrest.

10                  THE COURT: Another thing I would like  
11                  to ask of you gentlemen -- you don't have to  
12                  answer this if you choose not to -- is how  
13                  long do you think your case would take. I've  
14                  got some commitments which I needn't go into  
15                  at the moment for next week, the nature and  
16                  character of which is such that I was prompted  
17                  to call you gentlemen in for that very reason.  
18                  I don't know how long your case would take  
19                  because I was turning over in my mind the --  
20                  taking it because of this delay, and I suppose  
21                  Mr. Preminger would want to confer with his  
22                  clients.

23                  MR. PREMINGER: We have already done  
24                  that, sort of anticipating this conference.

1 We were going to ask for a conference with you.  
2

3 THE COURT: Is that so?

4 MR. LANDSMAN: Before we spoke to the  
5 clients. And there is another possibility  
6 which may make your whole time problem moot.  
7 We may be -- even if we go to trial, we may  
8 end up waiving a jury on this thing. This is  
9 what we were contemplating.

10 But, frankly, speaking for my own  
11 client, he would be disposed to taking a plea  
12 on this case. Of course, as you say, your  
13 Honor, you make no promises and we have no way  
14 of knowing, and I certainly do not intend to  
15 tell my client anything about what are the  
16 probabilities because he knows in a federal  
17 court there is no such thing.

18 THE COURT: Well, I wouldn't say there  
19 are none at all. But I had made it a practice  
20 over the years -- and there have been many --  
21 to refrain from saying anything which can be  
22 brought to the knowledge and attention of a  
23 defendant in advance of a sentence as to what  
24 I am likely to do because I don't think it's  
25 wise for a judge to give a defendant facing a

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1 sentence an opportunity to tell his confere  
2 or fellow angels, "All I am going to get is  
3 so-and-so." That is something that I think  
4 ought to be known only to the sentencing court.

5 Now, of course, the time element is --  
6 has helped a lot if there is . . . er. Because  
7 we spend time with picking a jury, opening and  
8 summing up. And we would like to avoid that  
9 under a string of circumstances as I am speaking  
10 of in this case. But the choice is yours.

11 MR. LANDSMAN: Of course.

12 THE COURT: Your client. But I am  
13 speaking through you.

14 MR. LANDSMAN: Yes.

15 MR. PREMINGER: Judge, it would seem to  
16 me that there is -- the question is a legal  
17 question anyway and in the trying of the case --  
18 it's whether recent possession is enough to  
19 infer -- for the government to be able to  
20 prove the interstate commerce or the interstate  
21 aspect of this case. And I think it's a legal  
22 question anyway.

23 MISS O'BRIEN: If I may --

24 THE COURT: Do you expect that it will

25

1                   be difficult in the face of the clear language  
2                   stated in the indictment? I am assuming they  
3                   can prove it.

4  
5                   MISS O'BRIEN: Your Honor, I can.

6  
7                   THE COURT: It moved from Jersey to  
8                   New York or vice versa, whichever the case was.

9  
10                  MR. PREMINGER: It's two months later now.

11  
12                  MISS O'BRIEN: Your Honor, it is my  
13                  understanding of the law that the government has  
14                  the burden of showing that the defendant knew  
15                  that this was stolen, but not that they knew  
16                  it was stolen from interstate. That is why  
17                  Mr. Preminger has the problem.

18  
19                  THE COURT: We have provisions in the  
20                  cases and very -- almost invariably given  
21                  instructions by the court as to whether possession  
22                  of something recently stolen may be knowledge or  
23                  -- knowledge of a stolen nature or of articles  
24                  recently stolen, and may be inferred from  
25                  surrounding circumstances and facts in the case.  
That's -- but, however, I don't want to say  
anything which may make either of you feel that  
I am suggesting anything. I am not.

MR. LANDSMAN: No, your Honor. That is

1  
2 not --

3 THE COURT: Not at all.

4 MR. LANDSMAN: Not at all.

5 THE COURT: These are not our most  
6 serious cases.

7 MR. LANDSMAN: No. I would say not.

8 MISS O'BRIEN: Your Honor, would you  
9 want the arrest records of the other two  
10 individuals?

11 THE COURT: Yes.

12 Well, really, this isn't important  
13 because the information has been obtained by  
14 counsel already.

15 MISS O'BRIEN: Fine.

16 THE COURT: So I am making no promises.

17 MISS O'BRIEN: I just thought if you  
18 wanted it.

19 THE COURT: So if you wish to spend  
20 a little time talking and deciding about your  
21 waiver of a jury trial -- if that is what  
22 your wish is, we will do it.

23 MR. PREMINCER: Okay. Let me adjourn  
24 to my private offices.

25 THE COURT: All right.

(Recess taken.)

(The following took place in open court.)

THE COURT: Yes, Mr. Landsman.

MR. LANDSMAN: Yes, your Honor.

Your Honor, the defendant William Rowe

who I represent has authorized me to offer to change his plea of not guilty to the indictment and change it to a plea of guilty to the one count contained in the indictment.

THE COURT: Mr. Rowe, you have heard what Mr. Landsman said in your behalf, that you wish to withdraw the plea of not guilty heretofore entered and substitute a plea of guilty to the indictment. Is that correct?

THE DEFENDANT ROWE: Yes, sir.

THE COURT: Keep your voice up.

THE DEFENDANT ROWE: Yes, sir.

THE COURT: Is that your wish?

THE DEFENDANT ROWE: Yes, sir.

'THE COURT: I am going to read to you what the indictment charges you with having done so that you may know what it is you are pleading guilty to.

The indictment charges that on or

about and between the 14th day of February,  
1971 and the 1st day of April, 1971, both  
dates being approximate and inclusive, within  
the Eastern District of New York -- that is,  
this district -- the defendant WILLIAM ROWE --  
that is, you -- did knowingly, wilfully and  
unlawfully receive a stolen 1968 Buick automobile,  
PVIN No. 4443781113765 and TVIN No. 443781120269,  
which had been transported in interstate commerce  
from Woodbridge Township, New Jersey to Queens,  
New York, the defendants WILLIAM ROVENDRO,  
CHRISTOPHER ESPINOSA and WILLIAM ROWE knowing the  
same to have been stolen.

The indictment charges you with a  
violation of Section 2312 of Title 18 and Section  
2 of Title 18 of the United States Code.

Now, did you commit the act charged or  
participate in the commission of the acts charged  
in the indictment which I have just read?

THE DEFENDANT ROWE: Yes, sir.

THE COURT: Are you pleading guilty  
because of that fact?

THE DEFENDANT ROWE: Yes, sir.

THE COURT: Now, you know you have a

right to a public trial before a jury and  
by entering your plea you have waived that  
right. Do you understand that?

THE DEFENDANT ROWE: Yes.

THE COURT: Do you know that as a  
result of your plea of guilty the court would  
have the right to impose a sentence of as long  
as five years or a fine of as much as \$5,000  
or both the fine and the sentence? Do you  
understand that?

THE DEFENDANT ROWE: Yes, sir.

THE COURT: Keep your voice up.

THE DEFENDANT ROWE: Yes, sir.

THE COURT: Yes. Has anybody, whether  
it's been Mr. Landsman, the U.S. Attorney, the  
Court or anybody else, made any promises to you  
as to what the specific sentence to be imposed  
upon you may be, the nature and the extent of it?

THE DEFENDANT ROWE: No, sir.

THE COURT: Is your plea entirely  
voluntary?

THE DEFENDANT ROWE: Yes, sir.

THE COURT: The plea is accepted.

MISS O'BRIEN: Your Honor, I -- can you

1 give the penalties for this crime?

2  
3 MR. LANDSMAN: He did.

4 MISS O'BRIEN: I am sorry.

5 MR. LANDSMAN: Your Honor went over  
6 the penalties.

7 I say you went over the penalties.

8 THE COURT: Of course.

9 MISS O'BRIEN: I am sorry. I didn't  
10 hear it.

11 THE COURT: I think I did.

12 MR. LANDSMAN: Yes. I remember five  
13 years and 5,000.

14 THE COURT: What is the bail situation?

15 MISS O'BRIEN: The defendant - -

16 MR. LANDSMAN: The defendant is out on  
17 a \$10,000 bond.

18 THE COURT: I will continue the bail.

19 MR. LANDSMAN: Thank you.

20 MISS O'BRIEN: No objection.

21 THE COURT: Surely.

22 MISS O'BRIEN: Thank you.

23 THE CLERK: Probation is right there.

24 MR. LANDSMAN: Yes.

25 THE COURT: Will you come up, Mr. Preminger,

1                   please?

2  
3                   Under some circumstances an attorney  
4                   who represents more than one defendant jointly  
5                   charged with the commission of a crime may  
6                   feel -- or whether he feels that way or not,  
7                   may really be representing two people whose  
8                   interests are in conflict with each other.

9  
10                  You know the facts and circumstances here. A  
11                  reading of the indictment may even have indicated  
12                  it. But I want you to state whether you may  
13                  proceed to represent both of them.

14  
15                  MR. PREMINGER: Judge, from my knowledge  
16                  of the case I do not think that representing  
17                  both clients would in any way constitute a  
18                  conflict.

19  
20                  THE COURT: Yes. That may very well be  
21                  so. If you say so, I assume you feel that way.

22  
23                  MR. PREMINGER: I do, Judge.

24  
25                  THE COURT: All right. Are we ready  
                      to proceed?

THE CLERK: Mr. Preminger, please produce  
your clients for a moment.

MR. PREMINGER: Come to the bench.

THE COURT: Mr. Espinosa and Mr. Rovendro.

I assume you heard what I said to  
Mr. Preminger, your attorney, respecting  
the possibility of a conflict of interest.  
He tells me -- and I have reason to believe  
that as he says there is no conflict of interest.  
You are the defendants in this case. If you  
feel that way about it, you may state so to the  
court, and if you fail to do so, I assume that  
you agree with Mr. Preminger, that there is no  
conflict of interest which would prevent him  
from representing both of you.

What is your answer to that?

DEFENDANT ROVENDRO: I think I -- I  
think I'd like to have another lawyer present.

THE COURT: I am afraid I didn't hear you.

DEFENDANT ROVENDRO: I think we would like  
to have two lawyers.

DEFENDANT ESPINOSA: Different lawyer a  
piece.

THE COURT: All right.

And your name is what?

DEFENDANT ESPINOSA: Espinosa.

THE COURT: Have you ever made any  
comment with respect to that before?

1  
2 DEFENDANT ESPINOSA: I never planned  
3 on going to trial. I had no intention

4 MR. PREMINGER: He has told me in  
5 chambers, Judge, the fact that we are going  
6 to trial now is a complete surprise to him  
7 because he had always felt that since - - what  
8 had happened before, that this case would  
9 never go to trial; that this case would somehow  
10 be disposed of either by being dismissed or a  
11 waiver. And he's at a - - it's a great surprise  
12 now that it's really going to trial.

13 THE COURT: Yes. You, Mr. Preminger,  
14 are assigned or are you here - -

15 MR. PREMINGER: That's right.

16 THE COURT: I see. Under those - -

17 MR. PREMINGER: Mr. Light was retained  
18 for these defendants for a private matter in  
19 Queens. But it was assigned here by the court.

20 THE COURT: Has any order or form or  
21 official assignment of you been made in this  
22 case?

23 MR. PREMINGER: I think Mr. Light was  
24 assigned. And he is engaged. And in my  
25 conference with the court - -

1  
2 THE COURT: I think the appearance  
3 before the magistrate - - or rather the  
4 minutes of the proceedings before the magistrate  
5 would indicate that he was retained counsel.

6 DEFENDANT ESPINOSA: He was retained,  
7 but then we went to jail and we couldn't pay him.

8 THE COURT: What's that?

9 DEFENDANT ESPINOSA: He was retained,  
10 but then we went to jail on the other case and  
11 he asked your Honor if we couldn't pay any  
12 more - - he asked your Honor to appoint him.

13 THE COURT: Was he assigned to represent  
14 you when you appeared before the magistrate?

15 DEFENDANT ESPINOSA: He was retained  
16 then.

17 THE COURT: Was he to your knowledge  
18 ever assigned in any other matter in this court?

19 DEFENDANT ESPINOSA: Yes.

20 DEFENDANT ROVENDRO: Yes.

21 THE COURT: When was that?

22 DEFENDANT ROVENDRO: When we appeared  
23 last April in front of you.

24 THE COURT: Was that at the time when  
25 you were arraigned on the indictment?

1 DEFENDANT ROVENDRO: Yes.

2 DEFENDANT ESPINOSA: Yes, sir.

3 THE COURT: Now, why doesn't the  
4 file have anything like that?

5 THE CLERK: I don't have any record of it.

6 THE COURT: Do you think you might find  
7 it here?

8 THE CLERK: This is blank.

9 MR. PREMINCER: They are all blanks  
10 before you fill them out.

11 THE COURT: Is that the one assigning you?

12 THE CLERK: It's blank.

13 MR. PREMINCER: But I found it in the  
14 file with the indictment.

15 THE COURT: Will you look through the  
16 file, this file, see if it's here? Maybe it  
17 was mislaid.

18 THE CLERK: There is a notice of  
19 appearance in which Mr. Light says he's been  
20 retained.

21 THE COURT: Now, here is a notice of  
22 appearance in which Mr. Light says he was  
23 retained to represent Mr. Rovendro.

24 THE CLERK: Rovendro and Espinosa.  
25

1 Both of them.

2  
3 THE COURT: I think there is one name.

4 THE CLERK: There are two names.

5 MR. PREMINGER: Was that in the  
6 magistrate's office?

7 THE COURT: Did you pay Mr. Light a fee  
8 in this case?

9 DEFENDANT ESPINOSA: No.

10 DEFENDANT ROVENDRO: No.

11 THE COURT: You did not?

12 DEFENDANT ESPINOSA: No.

13 THE COURT: Did you agree to pay him a fee?

14 DEFENDANT ROVENDRO: No, your Honor.

15 THE COURT: You both answered. What  
16 we are trying to find out is whether it would  
17 be advisable -- and it would appear to be so  
18 -- that we assign or ask you to retain another  
19 lawyer.

20 Obviously -- you are Mr. Rovendro and  
21 you are Mr. Espinosa. If you take the position  
22 that you feel you ought to have separate lawyers,  
23 obviously your co-defendant doesn't have to  
24 suggest that to the court because you have done  
25 it for both of you by saying that.

1 DEFENDANT ESPINOSA: Yes.

2 THE CLERK: There is nothing in the file.

3 THE COURT: Well, there is nothing in  
4 the file to indicate that any attorney was  
5 assigned to represent you.

6 I am going to ask you a couple of  
7 questions. Are you financially in a position  
8 to engage the services of a lawyer for this case?

9 DEFENDANT ESPINOSA: No, your Honor.

10 THE COURT: The answer is, no?

11 DEFENDANT ESPINOSA: No.

12 THE COURT: What do you do for a living?

13 DEFENDANT ESPINOSA: I'm incarcerated.

14 THE COURT: I want you to speak louder.

15 DEFENDANT ESPINOSA: I'm incarcerated  
16 at Comstock, at Great Meadows Institution  
17 Correctional Facility, Comstock, New York.

18 THE COURT: What is the last job you have  
19 had and when was it?

20 DEFENDANT ESPINOSA: In 1970.

21 THE COURT: 1970. Does that mean you  
22 have now been unemployed since 1970?

23 DEFENDANT ESPINOSA: Yes, sir, your Honor.  
24 '71, I mean.

1  
2 THE COURT: Is that because you have  
3 been confined since 1970 in part?

4 DEFENDANT ESPINOSA: Yes, your Honor.  
5 In part.

6 THE COURT: All right. Where do you  
7 reside?

8 DEFENDANT ESPINOSA: 780 Henderson Avenue,  
9 Staten Island.

10 THE COURT: Are you married or single?

11 DEFENDANT ESPINOSA: Married, your Honor.

12 THE COURT: Do you have a family?

13 DEFENDANT ESPINOSA: Yes, your Honor.

14 THE COURT: In addition to your wife?

15 DEFENDANT ESPINOSA: Excuse me.

16 THE COURT: In addition to your wife?

17 Do you have children?

18 DEFENDANT ESPINOSA: Yes.

19 THE COURT: How many?

20 DEFENDANT ESPINOSA: Three.

21 THE COURT: Who maintains and supports  
22 them?

23 DEFENDANT ESPINOSA: The Welfare, your  
24 Honor.

25 THE COURT: On Welfare. How long have

## **they been on Welfare?**

**DEFENDANT ESPINOSA:** Since 19 - -

THE COURT: Approximately.

DEFENDANT ESPINOSA: 1970. Yes.

Right before that.

THE COURT: Do you have a bank account?

DEFENDANT ESPINOSA: No, your Honor.

THE COURT: Do you own any real estate?

DEFENDANT ESPINOSA: No, your Honor.

THE COURT: Do you have an automobile?

DEFENDANT ESPINOSA: No, your Honor.

THE COURT: Do you have any securities  
or stock of any kind?

DEFENDANT ESPINOSA: No, your Honor.

THE COURT: I think you are legally eligible for appointment by the court for assignment of an attorney to represent you in this case.

Do you have your list there?

MR. PREMINER: Does your Honor plan to do the same thing - -

THE COURT: What's that?

MR. PREMINGER: - - for Mr. Rovendro?

Will he have assigned counsel, too?

2 THE COURT: If his financial position  
3 is the same as Mr. Espinosa, obviously I will  
4 name somebody to represent him and obviously  
5 - - quite as obviously it will be you. I do  
6 want to ask him the same questions though.

7 Before I decide to do so, since there  
8 is no indication of the fact that you have  
9 been assigned officially in this case - -

10 MR. PREMINGER: Well, Judge, actually  
11 Mr. Light I think has been assigned. And the  
12 reason that I am here now is because Mr. Light  
13 is actually engaged. In the event that Mr.  
14 Light - - that this case gets adjourned for any  
15 length of time because of new counsel coming in,  
16 my feeling is that Mr. Light would be available  
17 to try this case, and in which event I think  
18 that Mr. Rovendro would probably feel more - -  
19 have more confidence since Mr. Light is more  
20 familiar with this case than I am.

21 Is that true?

22 DEFENDANT ROVENDRO: Yes.

23 THE COURT: Defendants charged with a  
24 crime when they have counsel assigned to them - -

25 MR. PREMINGER: Yes.

1  
2 THE COURT: (Continuing) -- don't have  
3 the right under the Criminal Justice Act --  
4 don't have the right to select their own attorneys.  
5 However, for whatever it may be worth, he could  
6 hardly do better than having you represent him.

7 MR. PREMINGER: Thank you very much.

8 I appreciate that.

9 THE COURT: And Mr. Light is not here.

10 You have had an opportunity to familiarize your-  
11 self in some respect --

12 MR. PREMINGER: Yes, Judge.

13 THE COURT: (Continuing) -- with the case.

14 The case will have to go over.

15 MR. PREMINGER: What I am really doing is  
16 asking for the -- in the event that the case  
17 does go over and Mr. Light is available to try it  
18 -- because regardless of who is assigned, either  
19 one, since we are partners --

20 THE COURT: I am not assigning a partnership.

21 MR. PREMINGER: Oh, I see.

22 THE COURT: I am assigning you. If you  
23 should ask to be relieved and offer a good reason  
24 for it, I might then -- I probably then would  
25 redesignate Mr. Light.

1 MR. PREMINGER: I see.

2 Thank you very much.

3 THE COURT: All right. I am going to  
4 assign Mr. Albert Brackley, who is a very  
5 capable lawyer, who has tried many cases before  
6 this court. His office is at 44 Court Street  
7 in Brooklyn.

8 Mr. Cohen, my law clerk, will communicate  
9 with him, tell him of his designation by the  
10 court as the attorney for the co-defendant. And  
11 he will be requested to communicate with the  
12 defendant for the purpose of conferring with him  
13 in preparation for trial.

14 Now, where is he confined if at all?

15 Are you confined?

16 DEFENDANT ROVENDRO: Yes. Sing Sing  
17 State Prison.

18 THE COURT: Sing Sing?

19 DEFENDANT ROVENDRO: Yes, sir.

20 THE COURT: When did you begin the  
21 service of your sentence?

22 DEFENDANT ROVENDRO: January, 1971.

23 THE COURT: Were you sentenced to one  
24 terms or two terms of one each to run concurrently?

1  
2 DEFENDANT ROVENDRO: No. Two terms  
3 of three, one term of one.

4 THE COURT: What's that?

5 MR. PREMINER: One, one. Actually,  
6 what happened was he got one year on the facts  
7 arising out of these facts.

8 THE COURT: Yes.

9 MR. PREMINER: When you conclude that - -

10 DEFENDANT ROVENDRO: Right.

11 MR. PREMINER: When that was concluded  
12 he was sentenced to two, three to run concurrently,  
13 the one year that he had to serve on the E Felony  
14 that he pleaded to, the facts regarding this case,  
15 and he has already been - - it's already been  
16 served. And now he is on two three-year con-  
17 current - -

18 THE COURT: Both imposed at the same time.

19 DEFENDANT ROVENDRO: No. The last one  
20 was imposed December 13th. It just started.

21 MR. PREMINER: One was imposed December  
22 13th and one was imposed at the same time as the  
23 one year was imposed.

24 THE COURT: That's the second one. When  
25 was the second one?

1 DEFENDANT ROVENDRO: February 13th.

2 MR. PREMINGER: The first - -the  
3 secnd was imposed Decem .r, '72.

4 THE COURT: It would be running concurrently  
5 to the extent of the time when both of them - -

6 MR. PREMINGER: Actually, what happened  
7 was that he had done about a year before he got  
8 his second three-year sentence to run concurrently.  
9 So he lost about a year.

10 THE COURT: When was that second sentence  
11 which was made to run concurrently with the first?

12 MR. PREMINGER: In December. December, '72.

13 DEFENDANT ESPINOSA: Right.

14 MR. PREMINGER: Three months ago.

15 THE COURT: Well, it would only be  
16 concurrent to the extent of a year.

17 MR. PREMINGER: Yes. So they still  
18 have about three years to go. A little bit less.

19 THE COURT: Well, we will arrange to  
20 have - - we will arrange to have Mr. Brackley's  
21 client, the co-defendant here, brought here under  
22 a writ a week or so before we are ready to try  
23 the case so that Mr. Brackley can confer with him  
24 in preparation for the trial.

1  
2 THE CLERK: Would your Honor arrange  
3 to keep him here a day or two?

4 THE COURT: Maybe Mr. Brackley can see  
5 him now while we are putting the case over.  
6 Perhaps we can do that.

7 MR. PREMINGER: Wait a second, Judge.

8 THE COURT: We can arrange with the  
9 marshals - -

10 MR. PREMINGER: Judge, we have discussed  
11 this case with my clients. And as we were  
12 standing here at the bar, they have indicated to  
13 me that they would like to dispose of the case  
14 entirely and make a disposition of it now.

15 THE COURT: Translate it into simple  
16 language.

17 MR. PREMINGER: I can't do that. I would  
18 lose all my influence if I spoke slowly. They  
19 would like to take a plea.

20 THE COURT: I don't want you to use your  
21 influence. I want it to be a voluntary request.

22 MR. PREMINGER: It happened voluntarily.  
23 They indicated to me that they would like to  
24 withdraw their pleas of not guilty and enter a  
25 plea of guilty to the one count in the indictment.

1  
2 THE COURT: Well, you no longer represent  
3 the both of them. Unless they wish to both  
4 enter a plea.

5 DEFENDANT ROVENDRO: Yes.

6 DEFENDANT ESPINOSA: Yes.

7 THE COURT: You do?

8 DEFENDANT ESPINOSA: Yes, your Honor.

9 THE COURT: Well, let me address you  
10 one at a time. You are Mr. Espinosa.

11 DEFENDANT ESPINOSA: I am Espinosa.

12 THE COURT: Yes. And you?

13 DEFENDANT ROVENDRO: Rovendro.

14 THE COURT: I see. Before proceeding  
15 I want to ask both of you, since we find our-  
16 selves in a position somewhat different than  
17 the position we were in when I asked you about  
18 the possible conflict of interest - -

19 DEFENDANT ESPINOSA: Yes.

20 THE COURT: You have counsel here. He  
21 has indicated that you wish to withdraw your  
22 respective pleas of not guilty and enter a  
23 plea of guilty to the indictment. At this  
24 point it would hardly seem to be any conflict  
25 of interest since you are both - - since you

1 both wish to plead guilty.

2  
3 Now, if you feel, as I have just  
4 indicated that you don't feel -- if there is  
5 any conflict of interest, when all that is left  
6 is the sentencing procedure, then there is no  
7 point in naming Mr. Brackley to represent you,  
8 Mr. Rovendro.

9 DEFENDANT ROVENDRO: Yes.

10 THE COURT: Do you feel that way?

11 DEFENDANT ROVENDRO: Yes.

12 THE COURT: Do you feel that way?

13 DEFENDANT ESPINOSA: Yes.

14 THE COURT: Now, I want to be sure about  
15 that. Are both of you agreeable to have your  
16 interest represented by the one counsel?

17 DEFENDANT ESPINOSA: Yes.

18 DEFENDANT ROVENDRO: Yes.

19 THE COURT: Now, speaking to Mr. Espinosa  
20 first, you heard your counsel say that you wish  
21 to withdraw your plea of not guilty and enter a  
22 plea of guilty to the indictment.  
23

DEFENDANT ESPINOSA: Yes, your Honor.

THE COURT: Contained in the one count.

I am going to read the indictment to both of you.

I want both of you to listen very carefully.

Then I will address questions to you separately.

The indictment charges -- and I am repeating what I read in Mr. Rowe's case -- charges that on or about and between the 14th day of February, 1971 and the 1st day of April, 1971, both dates being approximate and inclusive, within the Eastern District of New York, the defendants WILLIAM ROVENDRO, CHRISTOPHER ESPINOSA and WILLIAM ROWE did knowingly, wilfully and unlawfully receive a stolen 1968 Buick automobile -- I am not going to repeat the numbers, the registration numbers. You have heard them. I read them in the case of Mr. Rowe -- which had been transported in interstate commerce from Woodbridge Township, New Jersey to Queens, New York, the defendants WILLIAM ROVENDRO, CHRISTOPHER ESPINOSA and WILLIAM ROWE knowing the same to have been stolen.

The crime charges a violation of Section 2312 and Section 2 of Title 18 of the United States Code.

Now, did you commit the acts or participate in the commission of the acts charged in the

1 count of the indictment which I just read?

2 DEFENDANT ESPINOSA: Yes.

3 DEFENDANT ROVENDRO: Yes.

4 THE COURT: Keep your voice up.

5 They have to be recorded.

6 Now, you know you have a right to a  
7 public trial before a jury if you wish. And  
8 by entering a plea of guilty to the charge  
9 you have waived that right. You understand that?  
10

11 DEFENDANT ESPINOSA: Yes.

12 DEFENDANT ROVENDRO: Yes.

13 THE COURT: Are you pleading guilty  
14 because you did what the government charges  
15 you with having done?

16 DEFENDANT ESPINOSA: Yes.

17 DEFENDANT ROVENDRO: Yes.

18 THE COURT: Is that correct?

19 DEFENDANT ROVENDRO: Yes.

20 DEFENDANT ESPINOSA: Yes.

21 THE COURT: Now, does each of you know  
22 that as a result of your plea of guilty the  
23 court would have the right to impose a sentence  
24 of as high or as long as five years or a fine  
25 of as much as \$5,000 or both the fine and the

prison sentence? Do you understand that?

**DEFENDANT ROVENDRO:** Yes.

**DEFENDANT ESPINOSA:** Yes.

THE COURT: Now, has anybody, either the District Attorney's office, your attorneys, the court or anybody else made any promises with respect to the nature and extent of the punishment that the court may provide in your case at the time sentence is imposed?

DEFENDANT ROVENDRO: No.

THE COURT: Has anybody used any threats  
of any kind?

DEFENDANT ROVENDRO: No.

DEFENDANT ESPINOSA: No.

THE COURT: Is your plea an entirely voluntary one?

DEFENDANT ROVENDRO: Yes.

DEFENDANT ESPINOSA: Yes.

THE COURT: The plea is accepted.

Since both of you are confined,  
obviously if there is a bail, the bail is  
continued in any event. If they are under  
bail in this case - -

MR. PREMINGER: Judge - -

1  
2 THE COURT: The date of sentence is  
3 indefinite because it depends upon the  
4 preparation of the necessary pre-sentence report.  
5 Your attorney and you will be informed in due  
6 course as to when that will be.

7 MR. PREMINGER: My clients just asked,  
8 Judge, that it be as soon as possible. They  
9 would like to get the sentence over with as soon  
10 as - - since they are currently in custody  
11 serving time.

12 THE COURT: Yes.

13 MR. PREMINGER: It would be to their  
14 interest to have the sentence as expeditiously  
15 as possible. In fact, if they could be sentenced  
16 today - -

17 THE COURT: Will you call the Probation  
18 Department?

19 THE CLERK: Irene is here.

20 THE COURT: Now, you have heard what  
21 has happened.

22 PROBATION OFFICER: Yes.

23 THE COURT: They are anxious and there  
24 appears to be merit in their request in their  
25 anxiety to have as early a date as possible.

1 I know we are short-handed in that department.

2 But will you tell Mr. Harin that we would  
3 like to get a report on it as soon as we can?

4  
5 PROBATION OFFICER: Yes. Certainly.

6 MR. PREMINGER: Thank you.

7 THE COURT: This lady will interview  
8 you gentlemen, all three of you. Do you  
9 want to go up to your office or down to your  
10 office?

11 PROBATION OFFICER: Well, maybe I will  
12 go down to see them.

13 THE COURT: All right. Suppose you go  
14 down with them.

15 MR. PREMINGER: I should go down, too?

16 THE COURT: Yes.

17 \* \* \*

18

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1  
2 A 65  
3 UNITED STATES DISTRICT COURT  
4 EASTERN DISTRICT OF NEW YORK  
5 -----x  
6 UNITED STATES OF AMERICA :  
7 -against- :  
8 CHRISTOPHER ESPINOSA and :  
9 WILLIAM ROVENDRO, : 71 CR 1142  
10 Defendants. :  
11 -----x  
12  
13 United States Courthouse  
14 Brooklyn, New York  
15 June 15, 1973  
16 10:00 a.m.  
17  
18 Before:  
19 HONORABLE LEO F. RAYFILL, U.S.D.J.  
20  
21  
22 HENRY R. SHAPIRO  
23 OFFICIAL COURT REPORTER  
24  
25

A 66

1  
2 Appearances:

3 ROBERT A. MORSE, ESQ.  
4 United States Attorney  
For the Eastern District of New York

5 BY: GAVIN SCOTTI, ESQ.  
6 Assistant United States Attorney

7 MARTIN LIGHT, ESQ.  
8 Attorney for Defendants

9 - - -

10  
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1  
2 THE COURT: Mr. Light, I assume you wish  
3 to make a statement in behalf of both of these  
4 defendants?

5 MR. LIGHT: Yes, your Honor. I have just  
6 spoken to them. If it pleases the Court, I  
7 wish to make an application.

8 THE COURT: What is the nature of the  
9 application?

10 MR. LIGHT: To withdraw their pleas of  
11 guilty and reinstate their pleas of not guilty.  
12 They indicated to me that they felt they were  
13 pressured into pleading guilty because they were  
14 not able to get a speedy trial and the case was  
15 hanging around for two years. My records indicate  
16 that I spoke to the Assistant United States  
17 Attorney that they were arrested in October of  
18 1971, that they were indicted a week or two  
19 later on November 9, 1971, to a one-count indict-  
20 ment.

21 I have from the Criminal Court, the County  
22 of Queens. They were arrested at JFK Airport  
23 parking lot No. 3. The defendants in posses-  
24 sion of a 1968 Buick -- in question in this case --  
25 and which they have been indicted here. They

were arrested in Queens and pleaded guilty and went to jail for it. It was their feeling that when they were indicted here that there was some talk --

THE COURT: Is what you are saying now applicable to both of the defendants? They both make the same claim that they were pressured into pleading guilty?

MR. LIGHT: For failure to have a speedy trial, the case was delayed at least a year and a half. Being that they were arrested and charged in October of 1971, based on certain conversations that there was a possibility that the indictment would be dismissed because they already pleaded technically to the same car, even though they are different charges. They pleaded guilty for the car, went to jail and are still incarcerated.

MR. SCOTTI: I would like to ask who those conversations were allegedly had with.

MR. LIGHT: I spoke with the former Assistant United States Attorney that had this file.

THE COURT: That was Miss O'Brien.

1 MR. LIGHT: The short fellow.

2 MR. SCOTTI: Mr. Favorito.

3  
4 MR. LIGHT: I spoke to Mr. Favorito about  
5 this case at the beginning and he said that I  
6 should get him a copy of the complaint, which  
7 I did. Your file might have it.

8 Also, I should get him a transcript of the  
9 court records showing that these defendants went  
10 to jail in the State Court for this crime and I  
11 sent that with a covering letter. I do not know  
12 if your file would have it or reflect it. He  
13 spoke with his superiors and they felt they  
14 didn't want to go along with it because the  
15 defendants may have been what they called in  
16 the street car thieves.

17 Both defendants are drug addicts. They  
18 were drug addicts. They have been in jail a  
19 year and a half, so they are not addicts any-  
20 more. They have a long history of drug addiction. If  
21 they were involved in stealing cars, they were  
22 being used because of their drug habits, and  
23 they are not a part of any top echelon people.

24 The word came back from Mr. Favorito's  
25 boss, whoever was above him -- I do not know if

it was Mr. Boyd or someone else -- that they  
didn't want to dismiss. The case lingered for  
a year after that when my partner came in on  
April 2, 1973 and took the plea. The indication  
was at that time, being that they are in jail  
for this crime --

THE COURT: As to their addiction to  
drugs, are you referring to both defendants?

MR. LIGHT: Both defendants were certified  
drug addicts. They have a long history  
of drug related crimes and possession of drugs.  
Now they are free from drugs. They have been  
incarcerated a year and a half.

THE COURT: Since you are making a  
blanket reference --

MR. LIGHT: It is to both of them.

THE COURT: -- may I assume what you claim  
with respect to one of them is equally applicable  
to the other?

MR. LIGHT: That is correct, your Honor.

THE COURT: For the moment, let us take  
up the question of drugs respecting Espinosa.

He was confined at the House of Detention  
and the usual tests were made -- among other

things -- to the use of drugs. With respect to Espinosa, Dr. Ruggiero, who has been in charge of that division at the House of Detention for a long time, said there was no needle marks either old or new and no indication of the fact that he was addicted to the use of drugs and that he should not be classified as a drug addict.

MR. LIGHT: I would agree on one point, the defendant should not be classified as a drug addict because when he was examined he was incarcerated for over a year and morphine does not appear in the urine after 40 hours.

THE COURT: Why wasn't something said about this when they entered their pleas of guilty, when you say you knew something about it?

MR. LIGHT: About what?

THE COURT: That they were pressured into --

MR. LIGHT: I was not here. Mr. Preminger took the plea. I just examined the defendant Espinosa right here and he has marks on his hands that show a sever amount of tracks, even though they are old.

THE COURT: Let me tell you something about

1 Espinosa's background. He is 31 years of age.

2 He has a record going back to the age of 14.

3 Now, I do not mean a criminal record at the age  
4 of 14. He was charged with being a delinquent  
5 child at the age of 14 and more specifically  
6 the charge was -- this is significant -- auto  
7 theft when he was 14.

8 Now, he was placed on probation. He was  
9 discharged and remanded to the Warwick Training  
10 School, which as you probably know --

11 MR. LIGHT: Is a reform school.

12 THE COURT: -- a place for the confinement  
13 of juvenile delinquents. That charge was leveled  
14 against him in 1956. In 1957 he was still 14  
15 and he was charged with loitering.

16 I realize that is not a serious offense,  
17 but it just shows a habit and a disposition to  
18 do this.

19 MR. LIGHT: There is no question that he  
20 has an extensive record, your Honor.

21 THE COURT: Just a moment.

22 He was continued on probation for that  
23 charge. Again, only a month or two later at the  
24 age of 14 he was charged with being a delinquent

1 child and again, significantly, auto theft, and  
2 he was remanded to the Warwick School.

3 Now, he has at 31 some three or four pages  
4 of record and I have not given any considera-  
5 tion whatsoever to the charges for which he  
6 was arrested which were dismissed. I am refer-  
7 ring to those where there was a finding of blame,  
8 of fault and guilt.

9 Of course, as he got along in years, the  
10 charges became much more serious because he was  
11 first a youthful offender and then an adult.  
12 He was sentenced to various terms of imprison-  
13 ment over the years.

14 As a matter of fact, he is now, as you  
15 know, and as I think you referred to, serving  
16 a New York State sentence which commenced in  
17 January of 1972. I do not know how long the  
18 sentence is.

19 MR. LIGHT: A three-year sentence that we  
20 worked out. It all evolved around the same  
21 period and involved cars.

22 THE COURT: Let me tell you what he said  
23 about the act which you say he wants to withdraw  
24 his plea of guilty to, because he was pressured  
25

1 into it and he wants to plead not guilty.  
2

3 In speaking to the probation officer who  
4 handled his case he said this: "The defendant  
5 admits the offense, claiming that he became  
6 involved stealing cars to support his heroin habit  
7 which had its onset seven years ago. He denies  
8 being part of a ring or automobile theft organi-  
9 zation which denial his court record on prior  
10 occasions fails to support."

11 The report is sufficiently objective when  
12 the probation officer tells us about the things  
13 which he denies having done.

14 I don't want to run the gamut of all those  
15 sentences. It's just about the worst record I  
16 have had presented before me and his co-defendant  
17 is not very much different.

18 MR. LIGHT: Every case is a drug related  
19 case.

20 THE COURT: He is not that much different  
21 as far as background is concerned.

22 He is 29 and at the age of 11 he was  
23 charged with being a delinquent child and he was  
24 placed on probation. At 12 he was charged again  
25 with being a delinquent child in that he was found

in possession of stolen property. Then at 15 he  
was again charged with being a delinquent child  
and he was committed to the State Training School  
at Otisville and he was paroled on October 21,  
1970, which accounts for the fact that there was  
a hiatus and he committed no other offense,  
but shortly after he was discharged he was charged  
with disorderly conduct and sentenced to 10 days  
and, of course, that's not a serious crime.  
We realize that. That was within a month or two  
after he was released from Otisville, and his  
record runs the gamut of all of those charges.

14 On the basis of my pre-sentence reports,  
15 the fact nothing was done about this previously --

16 MR. LIGHT: Is your Honor going to rule  
17 on the motion first?

18 THE COURT: Yes, and I am going to deny  
19 the motion for leave to withdraw the pleas of  
20 guilty heretofore entered by each of these defen-  
21 dants and I am prepared to impose sentence on  
22 the crime for which they are charged.

23 MR. LIGHT: Then I will direct myself to  
24 that then.

THE COURT: Yes.

1 MR. LIGHT: I take an exception.  
2

3 THE COURT: Will you address yourself to  
4 the question at hand.

5 MR. LIGHT: It's very difficult not to  
6 sentence somebody when you look at a long exten-  
7 sive record. It was a period of about one year  
8 in which these defendants tried to straighten  
9 themselves out.

10 What do I mean by that? The defendant  
11 Espinosa is married and has a family. He grew  
12 up in poverty, was led into drugs, was in drugs  
13 all his life. He reached a point, your Honor,  
14 when he started to get arrested for cars in  
15 Queens, Brooklyn, Staten Island, that he wanted  
16 once and for all to straighten this mess out,  
17 to try to become a productive person and rid him-  
18 self of his drug addiction and try to get back  
19 to his family.

20 What did we do? We sat down with the  
21 various authorities in Queens, in Brooklyn and  
22 Staten Island and they listened to us and they  
23 felt sorry for him. They felt that he has no  
24 crimes of violence. Most of the cases involved  
25 grand larceny of a car or truck. This is a

1 1968 car. What's the value of that? Everyone  
2 wanted to help him, so we worked out a disposi-  
3 tion which would be agreeable to everyone. It  
4 seemed that all the authorities, Brooklyn,  
5 Queens and Staten Island were satisfied with a  
6 three-year sentence. The defendant would have an  
7 opportunity to rehabilitate himself in prison,  
8 rid himself of his drug problem. So what happens,  
9 he does get sentenced, he pleads guilty on every  
10 case. That's why you have all those cases.

12 There were two or three on Staten Island,  
13 a case in Queens, one or two in Brooklyn. Within  
14 a short period of time he pleaded guilty on  
15 everything and threw himself on the mercy of  
16 the Court and begged for help and that Court  
17 found mercy and decided to give him help by giv-  
18 ing him a three-year sentence.

19 THE COURT: You are referring to whom  
now?

21 MR. LIGHT: Mr. Espinosa.

22 THE COURT: Yes.

23 MR. LIGHT: He gets sentenced and lo and  
24 behold they come up with this indictment.

25 Society is not going to have any greater

1 revenge by this case. This is a case he pleaded  
2 guilty to in Queens, theoretically. Technically,  
3 he is charged with transporting the car two  
4 months before. We are talking about a 1968  
5 Buick, not a 1971 Cadillac that was stolen for  
6 profit. This is a 1968 Buick.

7 THE COURT: I might tell you that there is  
8 a Cadillac involved in part of my report --

9 MR. LIGHT: He pled guilty to this case.  
10 Now he's going to get extra punishment on the  
11 exact car that he is punished for in the State  
12 Court? The man is in prison a year and a half.  
13 He hasn't seen his family. I know he has been  
14 a very, very bad father and husband --

15 THE COURT: He is charged with a violation  
16 of 2312 of Title 18 of the Code, which is a  
17 Federal offense.

18 MR. LIGHT: I have it before me, your  
19 Honor. I have the indictment before me.

20 He was also charged in the State Court  
21 with being in possession of the same car and  
22 here is the complaint from that court and he is  
23 in prison for that case.

24 I am saying, don't give him double  
25

1 punishment. We have a man that has been in prison  
2 a year and a half. He is on his way to rehabil-  
3 itation. He is in prison a year and a half. If  
4 this case would have been disposed of --  
5

6 THE COURT: When did he begin the rehabil-  
7 itative process? His first offense as a juvenile  
8 was at the age of 14 and they have gone on almost  
9 every year.

10 MR. LIGHT: You are talking when he was a  
11 child, when he was a dope addict. He is not  
12 addicted to drugs. He realizes his responsi-  
13 bilities.

14 THE COURT: One of the reasons he is not  
15 presently addicted to drugs is because it was  
16 not available to him. He was confined.

17 MR. LIGHT: Of course that may be a reason,  
18 if your Honor wants to consider that, but a  
19 person has to be drug-free before they can get  
20 rid of the habit.

21 THE COURT: I am wondering if his state-  
22 ment, made through you to me, claiming that he  
23 was pressured into pleading guilty and in truth  
24 and in fact he is not guilty seems from a state-  
25 ment that I was obliged to make earlier in the

1  
2 sentence of Rowe, when I said something about  
3 the fact that the other co-defendants can be  
4 treated less kindly because they are much more  
5 culpable and, since they were probably some-  
6 where in the building and their paths crossed  
7 and they may have learned about --

8 MR. LIGHT: The defendant is not denying  
9 he was in the car. The defendant would not take  
10 the stand and perjure himself if he went to  
11 trial. It is a question of law. Can the Govern-  
12 ment prove that he knowingly possessed a car that  
13 came from New Jersey? It did not have New Jersey  
14 plates --

15 THE COURT: And it was not knowingly done  
16 because he was an addict.

17 MR. LIGHT: I didn't say that, your Honor.

18 THE COURT: Go ahead.

19 MR. LIGHT: You are reading a probation  
20 report where he admits being in the car. There  
21 is no question of that. He is not going to  
22 look to withdraw his plea and take the stand  
23 and perjure himself. There is a legal question  
24 involved.

25 Here is a car with New York plates at

1  
2 Kennedy Airport. It is a burden upon the Govern-  
3 ment to show that the defendant knew that it  
4 came from Jersey, but your Honor denied the  
5 motion, so we won't address ourselves to it.

6 Your Honor, a person reaches a stage in  
7 life where they grow up. I am not talking about  
8 a 14-year old person growing up in poverty that  
9 doesn't know right from wrong.

10 We have a person in jail. He attends  
11 church services. He works with the chaplain.  
12 He is in prison a year and a half. If he is not  
13 on his way to rehabilitation now, he never will  
14 be. The first thing was to be drug-free. He  
15 couldn't be in the streets. The only reason he  
16 is drug-free is because he is in prison. What  
17 follows after that? Now he is in prison, he is  
18 drug-free, now it's up to him whether he will  
19 make a life for himself and the defendant feels  
20 he is making a life for himself, being he is  
21 drug-free and he has a mind to think now. You  
22 cannot think when you are under the influence of  
23 drugs.

24 THE COURT: I have stated some of the reasons  
25 why I do not believe that these defendants are

1 entitled to leniency as you urge upon the Court  
2 and in giving some of those reasons, I have been  
3 doing what the Court of Appeals recently said  
4 the Court -- thought was advisable -- when  
5 sentence is imposed the defendant about to be  
6 sentenced should be made aware of what was taken  
7 into consideration by the Court in imposing the  
8 sentence. I have been trying to find something  
9 of a mitigating nature in the report and I cannot  
10 find a single item.

12 Of course, your answer, Mr. Light, is  
13 that, "Well, they were under the influence of  
14 drugs and they didn't know what they were doing,"  
15 or words to that effect. That is in substance  
16 what you mean.

17 MR. LIGHT: According to the defendant he  
18 has been a drug addict all his life. We are not  
19 talking about crimes of violence. What does  
20 it take to rehabilitate a car thief who is a  
21 drug addict?

22 THE COURT: If they were engaged profitably  
23 in what they were doing, it would make little  
24 difference whether they were involved in violence  
25 or not.

1  
2 MR. LIGHT: When we have a crime of vio-  
3 lence, they speak of the violent angle. We have  
4 no profit here. We have a man whose family is  
5 on Welfare. The money went to drugs.

6 THE COURT: They are on Welfare because he  
7 does not work for a living.

8 MR. LIGHT: Because he was a drug addict.  
9 He couldn't work.

10 THE COURT: Do you want to say anything in  
11 your behalf, and I am not precluding you. Do  
12 you want to say anything -- I think you are  
13 Espinosa?

14 DEFENDANT ESPINOSA: It is true what he  
15 said, I was on drugs all those years. I would  
16 like to have a chance to rehabilitate myself and  
17 be with my family.

18 THE COURT: You are now serving a State  
19 Court sentence?

20 DEFENDANT ESPINOSA: Yes, your Honor.

21 THE COURT: That was imposed upon you  
22 early in 1972?

23 DEFENDANT ESPINOSA: Excuse me, your Honor.  
24 The last one was imposed December 12, 1972.

25 THE COURT: Now you want another chance?

You have had several other crimes committed in the same year. Did you then want another chance in 1971; for instance, criminal possession of stolen property, second degree, for which you received a sentence of one year? That was in 1972 --

DEFENDANT ESPINOSA: Like Mr. Light said --

MR. LIGHT: All the sentences went together, all concurrent to the three years.

THE COURT: But the offenses were separate.

MR. LIGHT: Right.

THE COURT: They were fortunate in that the Court had them run concurrently.

MR. LIGHT: Because they felt that three years for a person who was a drug addict all his life was sufficient and I am asking your Honor to consider the same thing.

THE COURT: You have heard the statement in your behalf, Mr. Rovendro. Do you wish to say something?

DEFENDANT ROVENDRO: The same thing. I would like to have a break. I have been on drugs all my life. In Sing Sing I go to school, I learn plumbing and I will have a chance to use it.

THE COURT: I am referring to both of you.

1                   Your rugged appearance belies --

2                   DEFENDANT ROVENDRO: They lost my pants  
3                   and I couldn't wear my pants today.

4                   THE COURT: I do not think you understood  
5                   me. "Rugged" means healthy and both of you have  
6                   appearances which belie the claim that is made  
7                   that you have been using drugs all your lives --  
8                   all your lives up to now.

9                   MR. LIGHT: They are in prison. They sleep  
10                  well, they have three meals a day.

11                  DEFENDANT ESPINOSA: I was certified a  
12                  drug addict in 1972.

13                  THE COURT: How much more time are you  
14                  required to serve in your State Court sentence?

15                  DEFENDANT ESPINOSA: The last sentence  
16                  was three years starting December 12, 1972.

17                  MR. LIGHT: They went to jail on this  
18                  case with this car case in Queens in January  
19                  and they were in jail on other cases that came  
20                  down as this case came down and we worked out  
21                  a disposition in the other cases.

22                  One of the other cases came up in December  
23                  in which we worked out the three years. So,  
24                  technically, the three years started in December

of 1972, which would mean they have until December of 1974 -- without parole or discharge they would be in prison until December of 1974.

I think they automatically get some good time.

THE COURT: Of course.

I am now referring to both of the defendants. There isn't a single mitigating or redeeming factor in these lengthy, detailed reports which are very, very comprehensive and upon which we have come to rely with complete confidence in our Probation Bureau. I find it necessary to impose the following sentence on each of them:

Each of the defendants is committed to the custody of the Attorney General or his authorized representative, to be confined in an institution to be selected by him, for a period of three years.

I am going to provide that the sentence imposed be under Section 4208(a)2 and it may be that the Parole Board which has the authority to do so, and I make no such recommendation, may decide on the basis of the information then

1  
2 available to them to grant them parole at any  
3 time during the course of the sentence.

4 MR. LIGHT: How does that work? They are  
5 in State custody. Do they go back? How does  
6 the sentence run?

7 THE COURT: I see no reason to have the  
8 sentence imposed on them by me run concurrently  
9 with the State Court sentence they are now serv-  
10 ing.

11 MR. LIGHT: If they go back to the State  
12 sentence, they get out in '74 and they first  
13 have to do three years, which is -- winds up  
14 seven years.

15 THE COURT: Since I say nothing, it's  
16 to run consecutively. I haven't set it to run  
17 concurrently.

18 MR. LIGHT: They will wind up doing seven  
19 years.

20 THE COURT: I want to direct your atten-  
21 tion to the fact that I have imposed sentence  
22 under 4208(a)2, which gives them certain bene-  
23 fits.

24 MR. LIGHT: I have just come from the  
25 Federal Court for the Southern District of

1 Florida before Chief Judge Charles Fulton. They  
2 refused to give the judges 4208(a)2 because the  
3 Department of Justice does not adhere to it.  
4

5 I have never had a client that was sen-  
6 tenced under 4208(a)2 that ever got out.  
7

8 THE COURT: Let me answer that: I had  
9 a fair number of letters from the Parole Board  
10 or from the heads of institutions where the  
11 particular defendant involved has been confined,  
12 that the right given under 4208(a)2 to the Board  
13 to grant parole prior to the expiration of one  
14 third of the sentence was fully availed of by  
15 them. No question about it. I do not know what  
16 their action would be with respect to these  
17 defendants. They will have available to them  
18 a copy of the pre-sentence report and all of  
19 the material that they may gather from where  
they are confined.

20 MR. LIGHT: Being they were arrested in  
21 October of 1971 and they have been incarcerated,  
22 will your Honor sentence non pro tunca as of that  
23 date so they will get when they finish the State  
24 sentence whatever credit they are entitled to?  
25

THE COURT: When did you say?

2 MR. LIGHT: The Assistant United States  
3 Attorney has the exact date.

4 THE COURT: The sentence imposed in the  
5 Supreme Court here in Kings was imposed on  
6 December 13, 1972 and it was run concurrently  
7 with the sentence imposed in March of 1972, so  
8 there is some nine months intervening there for  
9 which they'd be getting credit.

10 MR. LIGHT: My question was they were  
11 arrested in this case before your Honor on October  
12 12 of 1971 -- on this case -- and they have been  
13 incarcerated ever since. If the sentence is  
14 non pro tunc from the date of arrest, they would  
15 have some sort of credit.

16 THE COURT: I think I have excercised as  
17 much leniency for these defendants as they have  
18 any reasonable right to expect.

19 MR. LIGHT: How would they determine what  
20 credit they have? If the sentence is going to  
21 run from today three years, what about all the  
22 time they have been in jail on this case?

23 THE COURT: They have been in and out of  
24 jails, one since 11 and the other since he is 14 --

25 MR. LIGHT: That's not the question, your

1 Honor.

2  
3 THE COURT: It's not a novelty.

4 MR. LIGHT: That doesn't mean they should  
5 be in jail forever. They should get credit.  
6 They should get credit for --

7 THE COURT: They can easily avoid them  
8 by conducting themselves with decency and pro-  
9 priety, like every other law-abiding citizen is  
10 expected to do.

11 MR. LIGHT: Give them probation and let  
12 them prove it to you. They have been in jail  
13 almost a year and a half. What kind of credit  
14 do they get for that?

15 THE COURT: They have had many chances  
16 where they could have done that, as you put it,  
17 but they didn't.

18 MR. LIGHT: Does the Justice Department  
19 figure out what credit they have coming?

20 MR. SCOTTI: I have no knowledge.

21 THE COURT: This is a one-count indict-  
22 ment?

23 MR. SCOTTI: Yes, your Honor.

24 MR. LIGHT: We were assigned on this case  
25 and the defendants indicate that they would like

1  
2 to appeal because the sentence leaves them up  
3 in the air, plus the right to withdraw their  
4 plea.

5 THE COURT: Since the Court said nothing  
6 about the commencement date of the sentence,  
7 they will run consecutively to the sentence they  
8 are now serving in the State institution.

9 MR. LIGHT: That may be improper. If  
10 they are arrested by the federal authorities and  
11 they are in West Street for a year awaiting  
12 trial and they plead guilty in the state and  
13 they are in state prison, I don't see how they  
14 could lose that time.

15 THE COURT: When did you say?

16 MR. LIGHT: They were brought to this  
17 court in October of 1971.

18 THE COURT: For the purpose of pleading?

19 MR. LIGHT: Yes.

20 MR. SCOTTI: That was an arrest warrant  
21 and they were arraigned on October 13, 1971 before  
22 Magistrate Schiffman.

23 THE COURT: They were indicted shortly  
24 thereafter?

25 MR. LIGHT: November 9th.

I just want to say we were assigned on  
this case and the defendants indicate they want  
to file a notice of appeal. Do we have to get  
assigned to continue to handle the appeal? If  
an application is made to vacate or set aside  
the sentence for various grounds that may be  
urged, you may do so.

MR. LIGHT: Should we file the notice of  
appeal on their behalf?

THE COURT: You will have to wait until  
there is a disposition of such application.

If you wish to make one in their behalf,  
I will assign you for that purpose, since you  
have substantial familiarity with the proceed-  
ings here.

MR. LIGHT: We will file a notice on  
their behalf and leave it up to the Court of  
Appeals for us to be assigned or a new attorney.

THE COURT: You may proceed under 2255  
for the relief which 2255 grants. You may make  
such application and if the Court denies it and  
enters an order, then you will have an oppor-  
tunity to appeal. It is premature now.

MR. LIGHT: All right.

- - -

To be argued by  
JOAN S. O'BRIEN

## UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Docket No. 73-2278

UNITED STATES OF AMERICA,

Appellee,

- against -

WILLIAM ROVENDRO and CHRISTOPHER  
ESPINOSA,

Appellants.

On Appeal From the United States District Court  
For the Eastern District of New York

## BRIEF FOR THE APPELLEE

DAVID G. TRAGER,  
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Eastern District of New York.PAUL B. BERGMAN,  
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**United States Court of Appeals****FOR THE SECOND CIRCUIT****Docket No. 73-2278**

---

UNITED STATES OF AMERICA,*Appellee,**—against—*

WILLIAM ROVENDRO AND CHRISTOPHER ESPINOSA,

*Appellants.*

---

**BRIEF FOR THE APPELLEE**

---

**Preliminary Statement**

William Rovendro and Christopher Espinosa appeal from judgments of the United States District Court for the Eastern District of New York (Rayfiel, J.), entered June 15, 1973, following their pleas of guilty, convicting them on the one count in an indictment which charged them with the receipt of a stolen automobile which had been transported in interstate commerce, in violation of Title 18, United States Code, Section 2313 and Section 2.\* Both appellants were sentenced to prison terms of three years, pursuant to Section 4208(a)(2), which sentences

---

\* A co-defendant, William Rowe, also pleaded guilty to the indictment the same day as appellants (see Transcript of April 2, 1973, pp. 17-19; Government's Appendix, A. 39-A. 41). Rowe was subsequently sentenced to a prison term of two years. Rowe made no effort to withdraw his plea and has not prosecuted an appeal from the judgment.

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were to run consecutively to state prison sentences which they were then serving.

On appeal appellants argue as error the District Court's refusal to allow them to withdraw their pleas of guilty.

### **Statement of Facts**

On November 9, 1971, appellants were indicted in one count for receiving a stolen 1968 Buick which had been transported in interstate commerce with knowledge that it was stolen in violation of Title 18, United States Code, Sections 2313 and 2. On December 2, 1971, appellants, represented by Martin Light, Esq. (see Notice of Appearance, Government's Appendix, A. 5), pleaded not guilty to the charge in the indictment.

Thereafter, on April 17, 1972, the date set for trial, appellants orally moved before Judge Rayfiel for a dismissal of the indictment upon the ground that they had previously been convicted in the New York State Supreme Court, Queens County, for the "identical charge" involved in the federal indictment (Transcript of April 17, 1972, p. 3; Government's Appendix, A. 8). The Court did not consider the merits of that oral motion, but instructed counsel to make a formal motion to the Court embodying appellants' double jeopardy claims. The Court noted:

"... I am sure the Government wants to check into it to see if the charges against them were related to their plea of guilty and their present confinement was for the same offense" (*id.*, at p. 6; Government's Appendix, A. 11).

After counsel for appellants continued to orally press the motion, the Court once more demurred and stated: "We don't decide cases such as this by statements made in open Court by someone . . . [s]erve your motion

Se

papers. You can do no more than that and prepare a memorandum of law" (*id.*, at p. 8; Government's Appendix, A. 13). Following that colloquy, the Assistant United States attorney Vincent Favorito informed the Court that he had been awaiting motion papers in the matter, that he had never received them and that the Government was prepared to go to trial that day. Moreover, the Assistant informed the Court that the owner of the stolen vehicle was present and prepared to testify. Notwithstanding the Government's readiness, the Court adjourned the matter in order to permit counsel to make a formal motion setting forth appellants' claim of double jeopardy. The Court stated: "I suggest that you affix to your motion papers certified copies of the proceedings in the State Court." Counsel for appellants responded: "Absolutely, your Honor" (*id.*, at pp. 8-10; Government's Appendix, A. 13-A. 15).\*

The trial was subsequently set for April 2, 1973. On the morning of trial, for which trial the Government was once more fully prepared, appellants and their counsel, Marvin Preminger, Esq.\*\* and co-defendant Rowe with his attorney, appeared. The proceedings that day were initially held in Judge Rayfiel's chambers with all counsel present.\*\*\* Appellants, as well as Rowe, however, were not present. Although no express mention was made of the District Court's prior invitation to submit a formal motion based upon the double jeopardy claim, counsel once more asserted that appellants, as well as Rowe, had already received prison sentences on the related charges in the state as well as on additional, unrelated crimes (Transcript of April 2, 1973, pp. 4-6; Government's Appendix, A. 26-A. 28). Judge Rayfiel, however, implicitly rejected the double jeopardy claim but did indicate that he would, in the event of a plea of guilty, take into consideration the prior

\* No such motion was ever made.

\*\* Mr. Preminger appeared for his partner, Mr. Light.

\*\*\* By this time Mr. Favorito had left the United States Attorney's office and this case was handed by Assistant U.S. Attorney Joan S. O'Brien.

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state sentences (*id.*, at pp. 7-9; Government's Appendix, A. 29-A. 31).

Thereafter, following a brief recess, the proceeding continued in the courtroom with appellants and their co-defendant, Rowe, present. Initially, Rowe entered a plea of guilty (*id.*, at pp. 17-19; Government's Appendix, A. 39-A. 41). Before accepting that plea, the Court read the entire indictment to Rowe (in the presence of appellants) and ascertained if there was a factual basis for Rowe's plea of guilty. Thereafter, appellants offered to enter pleas of guilty. That offer came about in the following manner:

Mr. Preminger: Judge, we have discussed this case with my clients. And as we were standing here at the bar, they have indicated to me that they would like to dispose of the case entirely and make a disposition of it now.

The Court: Translate it into simple language.

Mr. Preminger: I can't do that. I would lose all my influence if I spoke slowly. They would like to take a plea.

The Court: I don't want you to use your influence. I want it to be a voluntary request.

Mr. Preminger: It happened voluntarily. They indicated to me that they would like to withdraw their pleas of not guilty and enter a plea of guilty to the one count in the indictment (*id.*, at p. 35; Government's Appendix, A. 57).

The Court again read the indictment and asked both appellants if they committed or participated in the commission of the acts charged in the indictment, to which they both responded affirmatively (*id.*, at pp. 38-39; Government's Appendix, A. 60-A. 61). The Court further informed:

The Court: Now, you know you have a right to a public trial before a jury if you wish. And by entering a plea of guilty to the charge you have waived that right. You understand that?

Defendant Espinosa: Yes.

Defendant Rovendro: Yes.

The Court: Are you pleading guilty because you did what the government charges you with having done?

Defendant Espinosa: Yes.

Defendant Rovendro: Yes.

The Court: Is that correct?

Defendant Rovendro: Yes.

Defendant Espinosa: Yes.

The Court: Now, does each of you know that as a result of your plea of guilty the Court would have the right to impose a sentence of as high or as long as five years or a fine of as much as \$5,000 or both the fine and the prison sentence? Do you understand that?

Defendant Rovendro: Yes.

Defendant Espinosa: Yes.

The Court: Now, has anybody, either the District Attorney's office, your attorneys, the Court or anybody else made any promises with respect to the nature and extent of the punishment that the Court may provide in your case at the time sentence is imposed?

Defendant Rovendro: No.

The Court: Has anybody used any threats of any kind?

Defendant Rovendro: No.

Defendant Espinosa: No.

The Court: Is your plea an entirely voluntary one?

Defendant Rovendro: Yes.

Defendant Espinosa: Yes.

The Court thereafter accepted the plea (*id.*, at pp. 39-40, Government's Appendix, A. 61-A. 62).

Sentencing was scheduled for June 15, 1973. On that date, appellants sought to withdraw their pleas of guilty

contending that their pleas were the result of a failure to be provided with a speedy trial (Transcript of June 15, 1973, pp. 3-4; Government's Appendix, A. 67-A. 68). Judge Rayfiel denied their motion and imposed a sentence on each appellant of three years imprisonment to run consecutively with their state sentences (*id.*, at pp. 11, 22, 27; Government's Appendix, A. 75, A. 86, A. 91). In the course of denying the appellants' motion to withdraw their pleas, Judge Rayfiel, who had the probation reports before him, remarked of the appellant Espinosa:

In speaking to the probation officer who handled his case he said this: "The defendant admits the offense, claiming that he became involved stealing cars to support his heroin habit which had its onset seven years ago. He denies being part of a ring or automobile theft organization which denial his court record on prior occasions fails to support" (*id.*, at p. 10; Government's Appendix, A. 74).

Finally, the Court found that there was not "a single mitigating or redeeming factor" in the lengthy pre-sentence reports to justify a lesser sentence (*id.*, at p. 22; Government's Appendix, A. 86).

## ARGUMENT

### **Appellants' motion to withdraw their previously entered pleas of guilty was properly denied by the District Court.**

Contending that Judge Rayfiel should have allowed them to withdraw their pleas of guilty, appellants make three arguments: (1) that the pleas were taken following a "perfunctory examination;" (2) that the instant prosecution was barred, as a matter of law, by the double jeopardy clause of the Fifth Amendment; and (3) that the Government's evidence would not have been sufficient

to convict. Appellants also contend that, under the circumstances of the case, the three year prison term imposed by Judge Rayfiel was a "sufficient injustice that requires reversal." \*

As noted by Chief Judge Friendly in *United States v. Pisacano*, 459 F.2d 259, 262 (2d Cir. 1972), it is a "familiar rule" that the standard governing appeals from the refusal to allow withdrawal of guilty pleas is "abuse of discretion." See also, *United States v. Komitor*, 392 F.2d 520, 521 (2d Cir. 1968), ("reversible only if clearly erroneous"). In arguing that there was such an abuse of discretion, appellants have fashioned a crazy-quilt argument. Thus, while urging that the Rule 11 inquiry was deficient because it did not, as they contend, establish "a factual basis for the acceptance of the plea" (Appellants' Brief, p. 7), they nevertheless—and with utter inconsistency—urge that their motion to withdraw the plea should have been allowed because they had previously pleaded guilty, in the state court to the commission of the same crime.

It is clear from all the prior discussions that Judge Rayfiel had, in the case concerning appellants' double jeopardy claims, as well as the pre-sentence reports which confirmed appellants' guilt, that he had an adequate basis

---

\* Appellants do not contend that their pleas were the product of coercion or threats, see *United States v. Paglia*, 190 F.2d 445 (2d Cir. 1951), nor do they contend that they were denied the effective assistance of counsel. See *United States v. Miller*, 254 F.2d 523 (2d Cir.), cert. denied, 358 U.S. 868 (1958); *United States v. Wight*, 176 F.2d 376 (2d Cir.), cert. denied, 338 U.S. 950 (1949).

Finally, in apparent recognition that the Government had twice been ready for trial, as well as their long delay in prosecuting this appeal, cf. *United States v. DeCavalcante*, 449 F.2d 139, 141 (3rd Cir. 1971), appellants have abandoned their major claim made before the District Court that their pleas were the product of a delayed prosecution.

upon which to conclude that the appellants were in fact guilty of the crime charged against them in the indictment. There is no dispute that each appellant was aware of the nature of the charges and that neither was coerced into the entry of the plea. The relatively simple indictment was read to each appellant and was read to the co-defendant in the presence of the appellants. Each unequivocally admitted his criminal conduct. Under these circumstances, and, given the fact that appellants never claimed that their pleas were the result of some misapprehension, no lengthy inquiry was required.\* In short, there is no issue of voluntariness. Compare, *United States v. Komitor, supra*; *United States v. Giuliano*, 348 F.2d 217, 221-222 (2d Cir. 1965).

Appellants' arguments concerning the double jeopardy clause and the effect of their previous state conviction are without merit. Initially, under the circumstances of this case, where competent counsel was aware of the claim prior to the plea and, in fact, had made a motion directed toward that seeming infirmity in the indictment, it would appear that the crime has been waived by virtue of the guilty plea. See, *Cox v. Crouse*, 376 F.2d 824, 826 (10th

\* Appellants for the first time on appeal claim that they had ". . . no knowledge whatsoever . . . that the car was in fact stolen . . ." (Appellants' Brief, p. 9). The foregoing statement by counsel is, of course, gratuitous and finds no support in the record. Moreover, appellants made no claims of innocence before Judge Rayfiel. See, *United States v. Hughes*, 325 F.2d 789, 792 (2d Cir.), cert. denied, 377 U.S. 907 (1964). In this regard it should be noted that appellants' claim that the Government had to prove their knowledge of the interstate character of the vehicle is at odds with settled authority. See, *United States v. Cioffi*, 253 F.2d 494 (2d Cir. 1958); *United States v. Messina*, 388 F.2d 393 (2d Cir. 1968). Moreover, appellants' pleas of guilt have foreclosed them from questioning, in any respect, the sufficiency of the Government's evidence, had the case gone to trial. See, *United States v. Smith*, 407 F.2d 33, 34-35 (2d Cir. 1969).

Cir. 1967); *Smith v. United States*, 359 F.2d 481, 483 (8th Cir. 1966); *United States v. Hoyland*, 264 F.2d 346, 351 (7th Cir.), cert. denied, 361 U.S. 845 (1959).

But, even if the claim of double jeopardy were not considered foreclosed, it is hardly tenable. Thus, even if one were to further assume, on the state of this record, that appellants have, in fact, been convicted in the state court of having possessed the same vehicle which was the subject of the instant indictment,\* it is clear that the double jeopardy clause does not bar a successive Federal prosecution following a state court conviction arising out of the same criminal act. See, *Abbate v. United States*, 359 U.S. 187 (1959); *United States v. Barone*, 467 F.2d 247, 250 (2d Cir. 1972); *United States v. Vaughan*, 491 F.2d 1096 (5th Cir. 1974); *Martin v. Rose*, 481 F.2d 658-659-660 (6th Cir. 1973).

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\* Appellants asserted in the District Court, and continue here the assertion that they were previously *convicted* in the state court for the same crime for which they have been charged in this case. Thus, at page three of their brief, appellants state:

This case involves the question of a Federal Prosecution for possession of a stolen car in interstate commerce and the imposition of a three year sentence when the appellants were convicted of the same crime under the laws of New York State and were incarcerated as a result of that State proceeding.

To buttress that factual assertion, appellants have included in their appendix (at p. 8A) the state court complaint which, concededly, speaks of the same 1968 Buick involved in the instant indictment. Appellants have neglected to point out to this Court, however, the fact that the indictment which followed that complaint contained a total of eight separate counts, some of which involved the 1968 Buick and others which, quite obviously, did not. As part of its appendix, the Government has included extracts of the minutes from the Queens County Supreme Court (documents supplied in 1972 by appellants' counsel) which are equivocal as to whether the appellants' were actually convicted of possessing the 1968 Buick. The Government has been in contact with appropriate State authorities and will endeavor to provide to this Court any additional documentation which will shed light on appellants' factual assertions.

Appellants' final argument, that a reversal is required in this case because of the sentence imposed by Judge Rayfiel, is clearly without merit insofar as it bears upon this Court's review of Judge Rayfiel's decision to retain their plea, see *United States v. Needles*, 472 F.2d 652, 654-656 (2d Cir. 1973); *United States v. Komitor, supra*, *United States v. Norstrand Corp.*, 168 F.2d 481, 482 (2d Cir. 1948). To the extent that it may be considered as attacking the sentence directly, it is completely at odds with this Court's long standing refusal to interfere with the sentencing discretion of the District Court. See, *United States v. Velazquez*, 482 F.2d 139, 142 (2d Cir. 1973) and cases cited therein. Moreover, there is no suggestion that the facts of this case warrant a departure from that doctrine. Compare, *United States v. Schwarz*, — F.2d — (2d Cir. Slip Opinions, p. 4961; decided July 23, 1973).

### CONCLUSION

**The judgment of conviction should be affirmed.**

Respectfully submitted,

July 31, 1974

DAVID G. TRAGER,  
*United States Attorney,*  
*Eastern District of New York.*

PAUL B. BERGMAN,  
JOAN S. O'BRIEN,  
*Assistant United States Attorneys,*  
*Of Counsel.*

Excerpts - from Brief for Appellants -

Povencio - Direct Appeal 73-2278-

An exception was taken (21A) and both appellants were sentenced to a three year term of imprisonment (22A).

POINT I

APPELLANTS' MOTION TO WITHDRAW THEIR PLEAS SHOULD HAVE BEEN GRANTED. THE STATE CONVICTION UNDER THE CIRCUMSTANCE OF THIS CASE SHOULD HAVE BARRED ANY FEDERAL PROSECUTION.

When the plea of guilty was taken in the within case, Rule 11 of the Federal Rules of Criminal Procedure was not complied with, because the Court did not satisfy itself that a factual basis for the acceptance of the plea existed other than merely reading the indictment to the appellants. The cases have held that routine questioning and a single response by a defendant that he understands the charge are not sufficient to comply with Rule 11, since the defendant must be advised of what actually is necessary to prove his judgment. Woodward v. United States, 420 F2d 959 (3rd Cir. 1970). It is necessary that, at the very least, a brief discussion be engaged in with the defendant, and that a mere perfunctory examination is not sufficient. United States v. Davis, 212 F.2d 264 (7th Cir. 1954); Julian v. United States, 236 F.2d 155 (6th Cir. 1956); United States v. Lester, 247 F.2d 496 (2nd Cir. 1957); Flores v. United States, 337 F. Supp. 45 (D.C.P.R. 1971).

It has always been held that when Rule 11 is not fully

complied with, the plea must fall and the judgment should be set aside. McCarthy v. United States, 394 U.S. 459 (1969).

In the case at bar, appellants claimed that the acts complained of constituted a State crime, for which they were already penalized, and since no specific knowledge that the theft was interstate can be shown, it would be wrong for them to be prosecuted in the Federal Courts.

Appellants point to the case of United States v. Crawford, 466 F.2d 1155 (10th Cir. 1972), where the Court of Appeals said that in a situation not unlike the instant case, it was wrong to prosecute a defendant in the Federal Courts where it appeared that he had served a sentence for

stealing the car in Wyoming and was thereafter prosecuted in the Federal Court for stealing the same car in Colorado and transporting it to Wyoming. It was pointed out that the defendant could not be guilty of both offenses, of the Federal crime and the original State felony charge. Since both the offense of larceny and receipt of stolen property were offenses that had to occur in the State of Wyoming, guilt on the larceny negated guilt on the receipt charge under the Federal section. The Court pointed out that the doctrine to be applied might be one of collateral estoppel, but at the very least it was a proper case for the exercise of the Court of Appeals supervisory power to correct

an obvious injustice.

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In the case at bar, the only thing that could have been proven by the Government was that the defendants were in possession of the stolen car at John F. Kennedy Airport in Queens, New York. The actual theft in New Jersey occurred about two months before, and there is not one iota of proof to show that the defendants stole the car in New Jersey, or that they knew it was taken in that state.

In fact, the Assistant United States Attorney pointed out that he did not consider it part of the Government's burden for the Government to show that they actually knew the car was stolen from another state (12A).

It is respectfully submitted that the Government's obligation was to prove that knowledge as an ultimate fact, Davidson v. United States, 61 F.2d 250 (8th Cir. 1932), although presumption of recent possession may have in fact aided the Government somewhat. Brubaker v. United States, 183 F.2d 894 (6th Cir. 1950). Of course, there is a question as to whether the presumption applied in this case, since the time lag was considerable, and of course, there was no knowledge whatsoever on the part of the appellants that the car was in fact stolen, let alone stolen in interstate commerce.

The knowledge that the car was part of interstate commerce is still a jury question and evidence must be

adduced to require submission of that question to the tryer of fact. Wilkerson v. United States, 41 F.2d 654, cert. den. 282, U.S. 894 (6th Cir. 1936); United States v. Wenner, 417 F.2d 979 (1969); Cunningham v. United States, 272 F.2d 791 (1959).

It is respectfully submitted that based upon the fact that the appellants were given and served a one year sentence in the State Court for the very same acts, that the acceptance of that plea and an imposition of a three year sentence in the Court below is a sufficient injustice that requires a reversal.

CONCLUSION

THE JUDGMENT APPEALED FROM SHOULD BE REVERSED AND APPELLANTS SHOULD BE ALLOWED TO WITHDRAW THEIR PLEAS. IN THE ALTERNATIVE, THE SENTENCE IMPOSED BELOW SHOULD BE SUSPENDED.

Respectfully submitted,

MARTIN LIGHT  
Attorney for Defendants-Appellants  
Office & P.O. Address  
66 Court Street  
Brooklyn, New York 11201

STANLEY M. MEYER  
Of Counsel

F# 733.32

da

A 110

UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT

No. 1236—September Term, 1973.

(Submitted August 15, 1974 Decided September 10, 1974.)

Docket No. 73-2278

UNITED STATES OF AMERICA,

*Appellee,*

v.

WILLIAM ROVENDRO and  
CHRISTOPHER ESPINOSA,

*Appellants.*

Before:

OAKES, *Circuit Judge,*  
FRANKEL and KELLEHER, *District Judges.\**

William Rovendro and Christopher Espinosa appeal from judgments of the United States District Court for the Eastern District of New York; Leo F. Rayfiel, *Judge*, entered June 14, 1973, following their pleas of guilty, convicting them on one count of an indictment which charged them with the receipt of a stolen automobile which had been transported in interstate commerce, in violation of 18 U.S.C. §§ 2313 and 2.

Affirmed.

\* Of the Southern District of New York and the Central District of California, respectively, sitting by designation.

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MARTIN LIGHT, Brooklyn, N.Y. (Stanley M.  
Meyer, of counsel), *for Appellants.*

JOAN S. O'BRIEN, Assistant United States Attorney  
(David G. Trager, United States Attorney  
for the Eastern District of New York;  
Paul E. Berman, Assistant United States  
Attorney, of counsel), *for Appellee.*

PER CURIAM:

Appellants' sole ground for appeal before this court is  
that they should have been allowed to withdraw their guilty  
pleas. Having examined the relevant transcripts and con-  
tentions addressed thereto, we are of the opinion that the  
judgments must be affirmed.

Judgments affirmed.

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MEILEN PRESS INC., 445 GREENWICH ST., NEW YORK, N.Y. 10013, (212) 966-4177  
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EASTERN DISTRICT OF NEW YORK

RJD:JOB:sj  
F# 750,178

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

A 112

----- X  
UNITED STATES OF AMERICA

AFFIDAVIT IN OPPOSITION

- against -

75 C 200

WILLIAM ROVENDRO,

Defendant.

----- X  
STATE OF NEW YORK)  
                      ) SS:  
COUNTY OF KINGS )

JOAN S. O'BRIEN, being duly sworn, deposes  
and says:

(1) I am an Assistant United States Attorney  
presently assigned to the Office of the United States  
Attorney for the Eastern District of New York and acting  
as such.

(2) This affidavit is submitted in opposition  
to the petition for a Writ of Habeas Corpus under Title 28,  
United States Code, Section 2255 submitted by the petitioner,  
William Rovendro.

(3) The petitioner, William Rovendro, together  
with two co-defendants, Christopher Espinosa and William  
Rowe, was arrested on April 1, 1971 at John F. Kennedy Air-  
port by Port Authority Police. On the night of their arrest,  
Rovendro and the others were observed to be driving in a  
stolen 1968 Buick PVIN No. 4443781113765. Rovendro exited  
from this automobile and approached a 1971 Cadillac, at which  
time he removed the door lock, and placed into the Cadillac  
an attache case that he had taken from the trunk of the  
Buick. The case contained a key making machine, 55 blank

car keys, key code books and a "slap jack". Co-defendant Espinosa succeeded in starting the Cadillac and subsequently William Rowe drove away in the Cadillac as the petitioner and Espinosa departed in the Buick. At this time all three were apprehended by the Port Authority Police and charged with possession of burglary tools, unauthorized use of an automobile, criminal possession of stolen property, possession of a key making machine, loitering, and possession of a Vehicle Identification number plate.

(4) On October 12, 1971, an arrest warrant was issued by United States Magistrate Max Schiffman for the arrest of these three individuals upon a complaint charging a violation of Title 18, U.S.C., §§2313 and 2, for receiving the stolen 1968 Buick knowing said vehicle to have been stolen and transported in interstate commerce. (No federal charges have been lodged against petitioner or the two accomplices for the theft of the 1971 Cadillac.)

(5) Petitioner was arrested by F.B.I. agents on October 13, 1971 and released upon the posting of a \$10,000 surety bond. The present indictment 71 CR 1147 was brought on November 9, 1971 and petitioner was arraigned on said indictment on December 2, 1971.

(6) On April 17, 1972, a date set for trial, petitioner orally moved this Court for a dismissal of the indictment on the grounds that they had previously been convicted in the New York State Supreme Court, Queens County, for the "identical charge" involved in the federal indictment (Transcript of April 17, 1972 at 3). The Court did not consider the merits but instructed counsel to make a formal written motion embodying petitioner's double jeopardy claims. (Id at 6-8). At that time Assistant United States Attorney Vincent Favorito informed this Court that he had been awaiting the filing of this motion, but had

never received it and that he was prepared to proceed to trial on that day. Notwithstanding the Government's readiness, the Court adjourned the trial in order to permit counsel to file a formal motion and suggested that counsel "affix to your motion papers certified copies of the proceedings in the State Court". (Id. at 8-10). No such motion was ever filed and the trial was set for April 2, 1973.

(7) Although no such motion was filed, the Assistant United States Attorney Vincent Favorito did receive a letter from defense counsel dated May 3, 1973, which enclosed an "extract from the minutes" by the Clerk of the Court, Supreme Court, Queens County. The Clerk of Court certified that William Rovendro was indicted for:

Grand Larceny 2nd Degree

Criminal Possession Stolen Property  
1st Degree

Illegal Possession Vehicle Identifi-  
cation Number Plate

Criminal Possession of Forged Instru-  
ment 2nd Degree (2 Counts)

Unauthorized Use of Vehicle (2 Counts)

Possession Burglar's Tools

The extract further states that on September 30, 1971 the defendant was convicted of the crime of "Criminal Possession of Stolen Property 2nd Degree" upon a plea of guilty and was sentenced on January 28, 1972 upon this conviction to a one year term of imprisonment. (See Appendix at 1, 2 ).

Further investigation by the Government resulted in locating a copy of the indictment filed in the Queens County Supreme Court against the petitioner, Espinosa and Rowe (See Appendix at 3a-3i).

(8) In April of 1973, I contacted Mr. Vincent Favorito to ascertain if he had made any agreements with

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Mr. Martin Light as to the possibility of dismissing the federal indictment on double jeopardy grounds. Mr. Favorito informed me that he discussed the issue with Mr. Edward J. Boyd, V, then Chief of the Criminal Division and they both agreed that federal prosecution on this indictment would be pursued. A conversation with Mr. Boyd in April of 1973 confirmed Mr. Favorito's statements. Mr. Favorito further informed that his decision not to dismiss the indictment was conveyed to Mr. Light and at no time did he promise anyone that he would dismiss the federal indictment. (This statement was in accord with Mr. Light's comments in Court on June 15, 1973.) (Transcript of June 15, 1973 at 5-6). The case was assigned to me, Assistant U.S. Attorney Joan S. O'Brien, in September of 1972 and at no time did I promise any defendant or attorney that we contemplated any action other than a trial on the indictment.

(9) On April 2, 1973, the Government was once more fully prepared to proceed to trial. At this time, Marvin Preminger (counsel for petitioner and co-defendant Rowe), Mark Landsman and I met in chambers with this Court. The defendants were not present. At this time no express motion was made by defense counsel on the double jeopardy claim but the Court was informed that the defendants had already received prison sentences on related state charges and other unrelated crimes (Transcript of April 2, 1973, p. 4-6). The Court implicitly rejected this claim but did indicate that in the event of a guilty plea, he would take into consideration the prior sentences instructing counsel, however, that they were not to give the defendants "any more assurances than I have given you and without giving any specific promises about concurrence of sentence." (Id. at 7-9). The Court after further colloquy reiterated "So I am making no promises" (Id. at 16).

After a brief recess, the proceedings continued in the courtroom with petitioner and the other two co-defendants present. At first the defendant Rowe entered a plea of guilty. (Id. at 17-19). Thereafter the Court addressed Mr. Preminger to ascertain if he felt that his joint representation of Mr. Espinosa and the petitioner created any conflict of interest. Mr. Preminger answered in the negative. (Id. at 21). The Court then personally addressed petitioner and Espinosa to inquire if they felt that any conflict of interest existed. (Id. at 21-22). Initially, Mr. Rovendro requested that a separate attorney be appointed for him and the co-defendant. (Id. at 22). With this request the Court asked petitioner and Mr. Espinosa questions as to their financial ability to afford an attorney in order to assign a new attorney to one of them. (Id. at 23-29) The Court thereupon assigned Mr. Preminger as counsel for petitioner Rovendro (allowing for a re-designation of Martin Light in the event that Mr. Preminger was unavailable for trial). (Id. at 30-31). Another attorney, Mr. Brackley, was appointed for co-defendant Espinosa. (Id. at 32). As the Court was making arrangements to assign Mr. Brackley, Mr. Preminger interrupted the Court with the information that both Rovendro and Espinosa desired to enter a plea of guilty. (Id. at 35). At this time the Court again personally addressed the petitioner and his co-defendant to ascertain if they felt the separate counsel were necessary for the entry of a guilty plea. (Id. at 36-37). Both men agreed that separate counsel were not necessary and the Court thereafter read the indictment and asked the usual Rule 11 questions. (Id. at 37-40). Petitioner admitted that he committed the acts charged in the indictment, that his plea was a voluntary one and that neither the Court nor counsel had made any promises with respect to the nature or extent of the sentence. (Id. at

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38-40). The Court thereafter accepted Mr. Rovendro's plea of guilty.

(10) On June 15, 1973, the date for sentencing, petitioner Rovendro and Espinosa sought to withdraw their guilty pleas alleging that they were coerced into pleading guilty because of a lack of a speedy trial (Transcript of June 15, 1973, p. 3-6). The Court denied their motion and sentenced petitioner to a term of imprisonment of three years to run consecutively to their state sentence. (Id. at 11).

(11) Thereafter petitioner Rovendro and co-defendant Espinosa appealed before the United States Court of Appeals for the Second Circuit this Court's order denying their motion to withdraw their pleas of guilty. One of the arguments briefed by counsel on appeal was the claim that the Fifth Amendment double jeopardy clause barred the federal prosecution because of the state's prior conviction (See Appendix at 4a-4N and 5a-5M). Argument on this appeal was presented on August 15, 1974 and a brief written opinion dated September 10, 1974 in which this Court's denial was affirmed was rendered. (See Appendix at 6 ).

(12) Petitioner now alleged by a petition under Title 28, U.S.C. §2255 the following constitutional violations: (1) denial of his Fifth Amendment right against double jeopardy, (2) denial of his right to effective assistance of counsel, (3) denial of his right to a fair trial because of a "coerced plea".

(13) It should be noted at the outset that petitioner's argument on double jeopardy claims was squarely presented to the United States Court of Appeals (See Appendix at 4J-4M and 5K-5L) and the petitioner's conviction was affirmed (See Appendix at 6 ). Issues disposed of

on appeal from the original jurisdiction by the Court of Appeals should not be re-reviewed under a motion to vacate the sentence where no intervening decision retroactively applicable to these issues has been rendered and the petitioner has failed to demonstrate manifest injustice in denying said motion. Panico v. United States, 412 F.2d 1151, 1154 (2d Cir. 1969); Castellana v. United States, 378 F.2d 231, 233 (2d Cir. 1967); Wapnick v. United States, 311 F.Supp. 183, 185 (E.D.N.Y. 1969) Bartels, J.); affirmed, 423 F.2d 1361 (2d Cir. 1970) (prosecution under Title 18, U.S.C. §2312); Agueci v. United States, 305 F.Supp. 998, 1000 (S.D.N.Y. 1969) (Edelstein, J.).

(14) In addition, where competent counsel and defendants were aware of a double jeopardy claim and did in fact make such a motion prior to a plea of guilty, this claim is waived by virtue of the plea of guilty. See Cox v. Crouse, 376 F.2d 824, 826 (10th Cir. 1967); Smith v. United States, 359 F.2d 481, 483 (8th Cir. 1966); United States v. Hoyland, 264 F.2d 346, 351 (7th Cir.) cert. denied 361 U.S. 845 (1959).

(15) Even if this Court were not to consider as foreclosed petitioner's double jeopardy claims, the petitioner has failed to demonstrate that the petitioner's conviction in the State Court for "Criminal Possession of Stolen Property, 2nd Degree" was for the possession of the 1968 Buick (named in the federal indictment) and not for the possession of the 1971 Cadillac, also in petitioner's custody while at the airport on the night of arrest, for which crime he was also arrested and indicted. The extract from the minutes does not specify the particular description of the crime to which petitioner pled other than the legal description: "Criminal Possession of Stolen Prroperty, 2nd Degree" (See Appendix at 2). A comparison between this extract and the indictment, however, indicates that this plea was a

lesser degree than the crime charged in Count 2 of the indictment, Criminal Possession of Stolen Property, 1st Degree. (Compare Appendix 2 with Appendix 3b).

Count 2 specifically charges the crime of criminal possession of the stolen Cadillac\*, not the 1968 Buick, the subject of the federal indictment. Thus, it appears that petitioner pled guilty to an entirely different crime involving possession of another car.

(16) Even assuming that the same vehicle named in the federal indictment was specified in the state conviction, however, it is clear that the double jeopardy clause does not bar a successive Federal prosecution following a State Court conviction arising out of the same criminal act.

Wapnick v. United States, supra, 311 F.Supp. at 185. See also, Abbate v. United States, 359 U.S. 187 (1959); United States v. Barone, 467 F.2d 247, 250 (2d Cir. 1972); United States v. Vaughan, 491 F.2d 1096 (5th Cir. 1974); Martin v. Rose, 481 F.2d 658, 659-660 (6th Cir. 1973).

(17) Petitioner's second claim as to the inadequacy of counsel is equally frivolous. Before the petitioner decided to enter a plea of guilty, the Court was the first to address the petitioner as to a possible conflict of interest at trial. When the petitioner requested a separate counsel, the Court carefully elicited answers from the petitioner and Espinosa as to their financial ability to afford counsel. Apparently the petitioner and Espinosa had originally

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\* The 1968 Buick was owned by Stephen Kmiec and was originally stolen in Woodbridge, New Jersey. The 1971 Cadillac was owned by the Great American Auto Leasing Corporation.

retained Mr. Martin Light as counsel (Transcript of April 2, 1973 at 25-26). Mr. Preminger, appearing on behalf of Mr. Light on April 2, 1973, informed that during the course of these proceedings, Mr. Light had been assigned by the Court because of Rovendro's indigency (Id. at 30). When petitioner requested separate counsel on April 2, 1973, the Court assigned the attorney who appeared, Marvin Preminger, as counsel for him but allowed for a re-designation of Marvin Light as counsel in the event that Mr. Preminger was not available. Co-defendant Espinosa was given the name of a separate counsel and the Court was arranging for a future trial date when petitioner and Espinosa indicated their desire to plead. (Id. at 35). At this point, the Court once again personally addressed Rovendro and Espinosa as to any possible difficulties with joint counsel in their entering a guilty plea. Both defendants agreed that separate counsel would not be necessary. (Id. at 36-37). At no time did petitioner claim that Mr. Preminger's representation was inadequate or that the presence of his partner, Martin Light, was necessary. It should equally be noted that petitioner made no claim that counsel was inadequate on the sentencing date or in his appeal to the Second Circuit.

Furthermore, petitioner has not indicated the manner in which he was prejudiced by the joint representation or has he even stated any potential conflicts of interest that might have occurred due to this type of representation. In all, petitioner was not deprived of his sixth amendment right to counsel.

18. Petitioner's final claim of a "coerced plea" is equally frivolous. Although the denial of petitioner's

plea of guilty was squarely presented to the Second Circuit, three different arguments have been made as to the manner in which petitioner's plea was "coerced"; one at the appellate level, one on the sentencing date before this Court and one in this petition under Title 18 United States Code, Section 2255.

On June 15, 1973 Mr. Light, counsel for both Rovendro and Espinosa sought to withdraw their guilty pleas on the grounds that they were denied their right to a speedy trial (Transcript of June 15, 1973 at 3-5). On appeal, appellant did not allege a lack of a speedy trial (possibly because of the fact that the government had twice been ready to proceed to trial) and argued instead that the Court failed to satisfy itself as to the factual basis for the plea in compliance with Rule 11, F.R. Crim. P. Now, in this petition, Rovendro claims that the plea was coerced because of some tacit or implied agreement between Martin Light and Assistant United States Attorney Vincent Favorito which was not complied with <sup>and</sup> because of a "prejudiced judge who appeared in too much of a hurry to complete the proceedings" (Petition at 3).

As to the first claim, Mr. Light confirmed the fact that Mr. Favorito and Mr. Boyd had made a decision not to dismiss this indictment, even after they were apprised of the State Court conviction (Transcript of June 15, 1973 at 5-6). Additionally, at the date of the pleading, petitioner responded "No" when asked if either "the District Attorney's Office, your attorneys, the Court or anybody else" made any promises as to a sentence (Transcript of April 2, 1973 at 39-40). When asked if the plea was "an entirely voluntary one", Rovendro responded "Yes". (Id. at 40). At no time did petitioner or counsel allege that any plea bargains with

the United States Attorney's Office had been made, or that petitioner Rovendro was operating with any understanding other than an unsubstantiated hope that his federal sentence would be concurrent with the State's. Disappointment with a sentence is not a ground to consider a withdrawal of a plea where no promises as to sentence were ever made.

(United States v. Needles, 472 F.2d 652, 654-656 (2d Cir. 1973); United States v. Norstrand Corp., 168 F.2d 481, 482 (2d Cir. 1948).

Finally, petitioner's claim that a "prejudiced" judge was in "too much of a hurry" to complete the proceedings is directly contrary to his argument of delayed prosecution at the time of sentence. The government was ready to proceed to trial with witnesses both on April 17, 1972 (Transcript of April 17, 1972 at 8-11) and on April 2, 1973 (Transcript of April 2, 1973 at 12-16). Although the Court indicated some difficulty with the trial continuing into the following week, (April 2, 1973 was on a Monday), Mr. Preminger indicated that although a plea was highly likely, if his clients proceeded to trial, he contemplated waiving a jury trial which would foreclose any scheduling difficulties. (Id. at 12). Thus, neither the Government nor the Court denied petitioner a speedy trial. On the other hand, the Court did not rush the petitioner into a plea before he considered the consequences. When petitioner indicated his desire for separate counsel, the Court made arrangements for separate counsel and started to schedule a future appearance in Court for the newly assigned counsel. It was the petitioners who then interrupted the Court with their desire to plead guilty at that time.

In all, there were no dilatory actions taken by the government or by the Court, as there was no pressure

brought by anyone to "coerce" the plea of guilty. In short, the plea was voluntary and it foreclosed petitioner from questioning the sufficiency of the evidence. See, United States v. Smith, 407 F.2d 33, 34-35 (2d Cir. 1969). In short, there are no allegations brought in the petition which would warrant a hearing under Title 28, Section 2255 or for a vacation of sentence.

*Joan S. O'Brien*  
JOAN S. O'BRIEN  
Assistant U.S. Attorney

Sworn to before me this  
1st day of May 1975,

*Sylvia E. Morris*

U.S. Marshal  
New York City  
N.Y.  
County  
Court of Appeals  
Date signed April 30, 1977

1  
2 UNITED STATES DISTRICT COURT  
3 EASTERN DISTRICT OF NEW YORK

Fathers On Paper  
hearing  
A 124

4 -----x  
5 WILLIAM ROVENDRO,

6 Plaintiff, :

7 -vs- : 75-C-200

8 UNITED STATES OF AMERICA, :

9 Defendant. :

10 -----x

11 United States Courthouse  
12 Brooklyn, New York

13 June 10, 1975  
2:00 p.m.

14

15

16 Before:

17 HONORABLE LEO F. RAYFIELD, U.S.D.J.

18

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20

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22

23 BURTON SULZER  
24 OFFICIAL COURT REPORTER

25

## Rovendro-direct

7

1 Rovendro-direct  
2 Q What Judge was that? A 125

**3** A I don't recall.

4 Q You don't recall. But in any event, you had  
5 a three year concurrent sentence, arising out of your July  
6 1971 arrest?

7 A Yes.

8            And when did you start that sentence?

**A** I think February '72

10 Q February 1972. And have you finished that sentence?  
11

**12** A Yes.

13 Q When did you finish that sentence?

14 A April '74

15 Q And now you are under federal sentence from  
16 Judge Rayfiel. right?

17 A Yes.

18 Q Now, this case, the one that was pending before  
19 Judge Rayfield, under Indictment 71 CR 1147 was set for a trial  
20 date on April 17th of 1972. Do you remember that date?

**21** | A Yes.

Q And do you remember being in this courtroom?

**23**           **A**           **Yes.**

Q And at that time were you incarcerated under  
that three year concurrent sentence that you received in the

1  
2 State Courts?

3 A Yes, I was.

4 Q Would I be correct in saying that you were  
5 brought down from Sing Sing to this courtroom?

6 A Yes.

7 Q Now, at that time -- by the way, who represented  
8 you in the State Courts?

9 A Martin Light.

10 Q On all occasions?

11 A Yes.

12 Q And did Martin Light represent you in the  
13 Eastern District on the indictment number that I mentioned?

14 A Yes.

15 Q And was he present at your arraignment?

16 A Yes.

17 Q Was he retained or assigned?

18 A On arraignment, retained.

19 Q And later he was assigned?

20 A Assigned.

21 Q And in April -- on April 17th, 1972 was Mr.  
22 Light present here in court with you?

23 A Yes.

24 Q And did you discuss your case with him?

25 A Yes.

2 Q And what was -- do you remember that discussion?

3 A Yes, I do.

4 Q And where did that discussion take place?

5 A I believe in the cell back there?

6 Q Is that to your left, his Honor's left?

7 A Yes.

8 Q Was anybody else present?

9 A No.

10 Q Do you remember the name of the Assistant  
11 Attorney who was in charge of prosecuting that matter?

12 A Favorito.

13 Q Vincent Favorito?

14 A Yes.

15 Q Did you ever speak to him regarding this case?

16 A No.

17 Q You had no personal contact with the United  
18 States Attorney?

19 A No.

20 Q Only contact you had was with your attorney,  
21 Mr. Light?

22 A Right?

23 Q Did you discuss this case with any other  
24 attorney other than Mr. Light?

25 A No.

2 Q In 1971, when you retained Mr. Light, did you  
3 know if he had any partners who were associated with him?

4 A Yes, I did.

5 Q Do you know their names?

6 A Preminger and Meyer, I believe.

7 Q Mr. Preminger and Mr. Meyer, is that correct?

8 A Yes.

9 Q Did you know them personally?

10 A Personally, no.

11 Q You dealt primarily with Mr. Light, is that  
12 correct?

13 A Yes.

14 Q Did you ever discuss your case with Mr. Meyer  
15 or Mr. Preminger?

16 A No.

17 Q I believe the name of the law firm was  
18 Preminger, Light & Meyer, is that correct?

19 A Right.

20 Q Did you ever go to Mr. Light's office and  
21 discuss the case with him?

22 A Yes.

23 Q This particular case, the federal case?

24 A I was there once or twice.

25 Q But in any event, in April of 1972, when you

1  
2 were discussing the case with Mr. Light, you were then incar-  
3 cerated at Sing Sing, correct?

4 A Yes.

5 Q What was the nature -- give his Honor the  
6 details of that discussion that you had with Mr. Light.

7 A Well, the discussion was that the case, the  
8 United States Attorney says the case was no good, it was a  
9 meatball case, that they just wanted a conviction, take a  
10 plea and I'd get a concurrent sentence. That was it.

11 Q That's the conversation that you had with Mr.  
12 Light or is that the conversation he had with you?

13 A What?

14 Q Who said what exactly?

15 A He said it.

16 Q That's what he said?

17 A Yes.

18 Q What happened on that date, 1972, do you  
19 recall?

20 A No.

21 Q Do you recall whether or not a motion was made to  
22 dismiss your case on the grounds of double jeopardy?

23 A Yes.

24 Q Do you remember when that was made?

25 A No, I don't.

2 Q Did Mr. Light discuss that with you?

3 A I don't recall.

4 Q Was there any discussion with you that -- that  
5 you and your attorney -- that the charges that were pending  
6 in Federal Court before Judge Rayfiel were exactly similar  
7 to the State charges that you had entered a plea of guilty to?

8 A Yes, it involved the same car.

9 Q What happened, the next thing that happened in  
10 your case? By the way, you didn't take a plea on that day,  
11 April 17, 1972?

12 A No, I didn't.

13 Q Right?

14 A I didn't.

15 Q Did you tell this conversation to anybody  
16 else?

17 A No.

18 Q So the only people who supposedly know this  
19 conversation is yourself and Mr. Light, is that correct?

20 A Yes.

21 Q Now, the next time you appeared in court was  
22 in April of 1973. Do you remember that?

23 A Yes.

24 Q Exactly April 2, 1973?

25 A Right.

2 Q And at that time were you still under State  
3 sentence?

4 A Yes, I was.

5 Q In other words, you weren't out on bail or  
6 parole?

7 A I was still in State prison.

8 Q From April of '72 until April of '73, had you  
9 discussed your case with Mr. Light, or anybody of his law  
10 firm?

11 A No.

12 Q And would I be correct in saying that you were  
13 brought to the pen out here, is that correct?

14 A Yes.

15 Q And was Mr. Light present on that date?

16 A No.

17 Q Do you recall who was present?

18 A Mr. Preminger.

19 Q And did you discuss that case at all on that  
20 date with Mr. Preminger in the pen or in the courtroom?

21 A No.

22 Q Did you at any time mention to Mr. Preminger  
23 that -- let me put it -- I will withdraw that. When Mr.  
24 Preminger appeared, did you ask him where Mr. Light was or  
25 did he tell you he was representing you today?

1 A I asked him, he said he couldn't make it.

2 Q And what else, what was the rest of the con-  
3 versation?

4 A That was about it. He said he couldn't make  
5 it and he didn't want to represent me because he wasn't  
6 familiar with the case. And he wanted a postponement.

7 Q And what happened?

8 A The outcome was, I took a plea.

9 Q And did he discuss the facts of the case with  
10 you?

11 A No. He wasn't familiar with it.

12 Q Did he discuss a plea with you?

13 A No.

14 Q Do you know to what charge you pleaded guilty?

15 A Interstate transportation of a 1968 Buick.

16 Q At the time you took the plea, do you recall  
17 that Judge Rayfiel questioned you concerning your plea?

18 A Yes.

19 Q Do you remember that?

20 A Right.

21 Q And by the way, was there a co-defendant  
22 present with you at that time?

23 A Yes, Christopher Espinosa.

24 Q Who was his lawyer, if you know?

2 A Martin Light.

3 Q And did Mr. Preminger represent him on that  
4 date, also?

5 A Yes.

6 Q Did he take a plea also?

7 A Yes.

8 Q And do you recall that Judge Rayfiel questioned  
9 you?

10 A Yes.

11 Q Concerning your plea?

12 A Yes.

13 Q And do you remember Judge Rayfiel asking you  
14 if your plea was voluntary?

15 A Yes.

16 Q And whether any promises had been made to you?

17 A Yes.

18 Q And you denied that, is that correct?

19 A That's correct.

20 Q Now, did you tell Mr. Preminger on that date,  
21 the date you took your plea in April of '73, that Mr. Light  
22 had made an arrangement with Mr. Favorito that you were to  
23 obtain a concurrent sentence?

24 A No, sir.

25 Q At the time you took the plea, was it your

1 understanding, as far as you were concerned, that the arrangement  
2 that Mr. Light had told you about between him and Mr.  
3 Favorito was the reason you took the plea, is that correct?

4  
5 A That's right.

6 Q As far as you were concerned in your own mind,  
7 you expected to receive a concurrent sentence from Judge  
8 Rayfiel, is that correct?

9 A That's correct.

10 Q No doubt about that?

11 A No doubt.

12 Q And obviously you didn't obtain a concurrent  
13 sentence, is that correct?

14 A That's correct.

15 Q Judge Rayfiel sentenced you. Do you recall the  
16 sentence?

17 A Three years consecutive.

18 Q And that was to start after you finished your  
19 State time, is that correct?

20 A Yes.

21 Q Assuming Judge Rayfiel had lived up -- I will  
22 withdraw that. Assuming your sentence was a concurrent three  
23 year sentence, would you have finished your time as of this  
24 date?

25 A Yes.

2 Q When would you have finished your incarceration?

3 A April of '74.

4 Q And the date of sentence was June 15, 1973.

5 Was it in the same courtroom again?

6 A Yes.

7 Q Were you still at Sing Sing?

8 A Yes.

9 Q And had you spoken to Mr. Light or Mr.  
10 Preminger from the date of your plea until the date of your  
11 sentence?

12 A No.

13 Q Mr. Light represented you on June 15th, 1973,  
14 is that correct?

15 A Yes.

16 Q And did you discuss or talk to Mr. Light that  
17 day?

18 A Yes.

19 Q And by the way, there was another defendant by  
20 the name of Rowe who was also sentenced on June 15th, isn't  
21 that correct?

22 A Yes.

23 Q Were you present in court when Mr. Rowe was  
24 sentenced?

25 A Yes, I was.

2 Q And Mr. Rowe received a sentence of imprisonment  
3 from Judge Rayfiel, isn't that correct?

4 A That's correct.

5 Q And then your case was called after his, is  
6 that right?

7 A Yes.

8 Q And did you give Mr. Light any particular  
9 instructions when your case was called?

10 A Yes, I did.

11 Q Tell his Honor what you told Mr. Light.

12 A I told him, "Withdraw my plea."

13 Q What reason.

14 A "I see Rowe got two years," somebody wasn't  
15 holding up to the bargain.

16 Q You had assumed Judge Rayfiel had sentenced  
17 Mr. Rowe to two years, and because he -- of his background  
18 and your background, you assumed if he obtained a two year  
19 sentence, you would have received at least two or more?

20 A That's right.

21 Q As a matter of fact, you were right because  
22 Judge Rayfiel sentenced you to three years, is that correct?

23 A That's correct.

24 Q And you asked Mr. Light to withdraw your plea  
25 on June 15th, 1973?

2 A Right, yes.

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3 Q And that was because you didn't receive the  
4 sentence that you assumed you were promised?

5 A Right.

6 Q And you want the Court to specifically perform  
7 the sentence -- keep the promise that was made to you, is  
8 that correct?

9 A That's correct.

10 Q Now, is there anything else that you would like  
11 to tell the Court in connection with the facts surrounding  
12 this matter that I may have omitted to ask you about? Have  
13 we covered everything?

14 A Yes.

15 MR. ELEFANT: I have no further questions at  
16 this time.

17 THE COURT: Ms. O'Brien.

18 CROSS-EXAMINATION

19 BY MS. O'BRIEN:

20 Q Mr. Rovendro, you stated that you entered a  
21 plea in Queens in September 30th, 1971, is that correct?

22 A Yes.

23 Q And to what crime, specifically, did you enter  
24 a plea of guilty?

25 A Criminal possession of stolen property.

2 Q All right. And you testified that it was on  
3 this occasion that you had this discussion with Mr. Light?

4 A Yes.

5 Q Is that not correct?

6 A Yes.

7 Q Can you please tell us exactly what Mr.  
8 Light told you and what you said to Mr. Light on that  
9 occasion? 7

10 THE COURT: Just a moment. Will you repeat  
11 that question.

12 (Read)

13 THE COURT: What's your answer to that?

14 THE WITNESS: On that occasion, like I said,  
15 he said the United States Attorney said the case was  
16 nothing.

17 Q It was his word, "nothing"?

18 A Yeah, the case was a nothing. Meatball case.

19 Q Was that his words or your words, "meatball  
20 case"?

21 A His words.

22 Q He used the words "meatball case"?

23 A Yeah.

24 Q What did you understand him to mean by a  
25 meatball case?

1  
2 A Just like I said, the case was nothing, there  
3 was no case there.

4 Q What else did he say?

5 A He said --

6 Q Did you ask him why the United States Attorney  
7 didn't just dismiss the case ~~then~~ or something of that  
8 nature?

9 A He was told not to.

10 Q Who told you not to?

11 A He was told not to.

12 Q He was told not to dismiss the case?

13 A That's right.

14 Q Who told him not to dismiss the case?

15 A His superior, I guess.

16 Q You are referring to the United States Attorney,  
17 he was told not to dismiss the case?

18 A I believe so.

19 Q What did Mr. Light say to you?

20 A They want a conviction on paper, to take a  
21 plea and get a concurrent sentence.

22 Q Did Mr. Light tell you that Mr. Favorito had  
23 told him they just wanted a conviction on paper?

24 A That's right.

25 Q And what else, did he say anything else?

1 A No.

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2 Q Did Mr. Light tell you that Mr. Favorito had  
3 told him that he was going to recommend a concurrent sentence?

4 A Recommend, no.

5 Q That he would somehow get you a concurrent  
6 sentence?

7 A Yes.

8 Q So Mr. Light told you that Mr. Favorito told  
9 him that he would get you a concurrent sentence?

10 A True, right.

11 Q Was there any other conversation that you had  
12 with Mr. Light on that occasion?

13 A Not that I recall.

14 Q Can you tell us how many times you met with  
15 Mr. Light prior to April of 1972 to discuss this particular  
16 case?

17 A None that I recall.

18 Q None that you recall?

19 A That's right.

20 Q Did you have any phone calls with Mr. Light  
21 concerning this particular case?

22 A What?

23 Q Before this meeting in the pen, I'm talking  
24 about.

25 A I was in State prison then.

1 Q Did he meet you in the prison?

2 A No.

3 Q Did you ever go to his office?

4 A I was in State prison.

5 Q So you never went to his office accompanied  
6 by prison authorities?

7 A No.

8 Q And you never called him?

9 A I might have called him once, twice.

10 Q Did he have any discussion concerning this  
11 double jeopardy issue?

12 A At that time, no.

13 Q Prior to this meeting in the pen?

14 A No.

15 Q Were you satisfied with the representation  
16 you were receiving by Mr. Light up until this meeting in the  
17 pen?

18 A Yes.

19 Q Were you satisfied with the representation you  
20 had by Mr. Light and Mr. Preminger before the date of the  
21 sentencing?

22 A Well, for the plea I wasn't satisfied.

23 Q At the plea you weren't satisfied?

24 A That's right.

1 Q You weren't satisfied with who, Mr. Preminger  
2 or Mr. Light?

3 A I felt Mr. Light should have been there.

4 Q So you were not satisfied because he didn't  
5 appear?

6 A Because he wasn't there. Mr. Preminger wasn't  
7 familiar with the case.

8 Q Did you -- up until the date of the plea in  
9 April of '73, were you satisfied with the way Mr. Light was  
10 handling your case?

11 A Yes.

12 Q Let's turn to April of 1973. Did you have a  
13 discussion with Mr. Preminger prior to appearing in court  
14 here on that date?

15 A No.

16 Q Did you have a discussion with Mr. Preminger  
17 during the course of the proceedings in court?

18 A Yes.

19 Q And isn't it a fact that you told Mr. Preminger  
20 at that time that, "I wish to enter a plea of guilty"?

21 A True.

22 Q What motivated you to enter a plea of guilty  
23 at that time?

24 A Because of the deal with the concurrent

1                     sentence.

2  
3                 Q     Did Mr. Preminger tell you that they had a deal  
4     on the concurrent sentence?

5                 A     Mr. Preminger wasn't                     familiar with the  
6     case at all.

7                 Q     What did Mr. Preminger tell you after you had  
8     told him you wanted to plead guilty?

9                 A     He told me nothing.

10                Q     Isn't it a fact that Mr. Preminger initially  
11     anticipated going to trial without a jury? Had you had any  
12     discussion about this?

13                A     Yes.

14                Q     Did you inform Mr. Preminger that you were going  
15     to trial without a jury on this very day?

16                A     Yes.

17                Q     And that you were ready to proceed with Mr.  
18     Preminger if you had gone to trial on that day? I am talk-  
19     ing about April --

20                A     Well, I had no choice --

21                Q     I'm talking about April 2, 1973.

22                A     I had no choice but to proceed with him  
23     because the Judge, your Honor took Marty Light off the case.  
24     He assigned Mr. Preminger.

25                Q     Well, were you prepared to go to trial on

1 April 2nd, 1973?

2  
3 A No.

4 Q You weren't prepared to go to trial?

5 A No.

6 Q Were you prepared to go to trial on a sub-  
7 sequent date?

8 A No.

9 Q Why; were you going to enter a plea of guilty?

10 A Yes.

11 Q So it was your own free will and decision to  
12 enter a plea of guilty on April 2nd, 1973?

13 A With that promise, yes.

14 Q With the promise that was given to you a  
15 year prior in April of 1972 solely by Mr. Light?

16 A My attorney, yes.

17 Q Did you ever request to speak yourself to the  
18 Assistant United States Attorney handling the case?

19 A No.

20 Q Do you recall Judge Rayfiel on April 2, 1973  
21 making a statement to you, asking you if any promises had  
22 been made by your lawyer to you?

23 A Yes.

24 Q You remember him saying that, don't you?

25 A Yes, I do.

2 Q What did you respond to that question?

3 A No.

4 Q And you answered that question in the negative  
5 even though you believed that there had been a prior repre-  
6 sentation made to Mr. Light?

7 A Right.

8 Q Do you recall the Judge at that time informing  
9 you of the penalties on the federal charges, that you could  
10 get up to five years imprisonment?

11 A Yes, I recall.

12 Q You were aware of that?

13 A Yes.

14 Q And yet you still never brought it to the  
15 Court's attention that you expected or that you were  
16 promised a concurrent sentence?

17 A Can I say something? I never been in Federal  
18 Court before. I been in State Courts many times. And over  
19 there when you make a deal you make it with the District  
20 Attorney and everytime they ask you, "Have you been promised,"  
21 you, as always say no. It's a formality. I never been in  
22 the Federal Court. The State Court, it's a formality.  
23 "Have you ever been promised something?" You say, no.

24 THE COURT: It would be better if you speak  
25 as clearly and distinctly as you have in the last

2 Q So aside from that promise, the one promise that  
3 you feel was made to you, aside from that one promise, you  
4 were satisfied with the joint representation of Mr. Preminger  
5 as you entered the plea of guilty?

6 A Not really because I didn't think it would make  
7 no difference. I was going to get a concurrent sentence.

8 Q I see. Aside from that issue, was there any-  
9 thing else about Mr. Preminger's representation of you that  
10 you disagreed with, at that time?

11 A He wasn't familiar with the case whatsoever.

12 Q All right. Did you feel that there was any  
13 conflict of interest between you and Mr. Espinosa in enter-  
14 ing that plea of guilty?

15 A Well, if I wasn't aware of the promise, yes,  
16 I would never accept it. Not for both of us.

17 Q For an entry of a plea of guilty, entering a  
18 plea, yes, I'll accept it.

19 Q So, in other words, if you had gone to trial  
20 you would want separate counsel, is that not a fact?

21 A Yes.

22 Q But you decided not to go to trial?

23 A Yes.

24 MS. O'BRIEN: No further questions, your  
25 Honor.

1                   A       Yes.

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2                   THE COURT: Are you referring now to the 12th  
3                   of April '73?

4                   MS. O'BRIEN: The 2nd of April, 1973.

5                   Q       On that occasion were you present during a  
6                   discussion that was held between yourself, myself, Judge  
7                   Rayfiel and Mr. Mark Landsman, another attorney, in the  
8                   chambers of Judge Rayfiel?

9                   A       Yes.

10                  Q       Prior to going to chambers on that occasion  
11                  had you discussed this case at all with Mr. Rovendro?

12                  A       I don't think so.

13                  Q       Did there come an occasion that we left chambers  
14                  and went into open court?

15                  A       Yes.

16                  Q       And that Mr. -- all the defendants were  
17                  produced in open court, is that not a fact?

18                  A       Yes.

19                  Q       Now, on that occasion had you discussed any  
20                  of our discussions in chambers with any of these defendants  
21                  before they were brought out in open court, do you recall?

22                  A       Well, I recall speaking to the two defendants,  
23                  meeting them and discussing the case with them in the pen  
24                  adjacent to this courtroom.

2 Q And can you recall approximately for how long  
3 a period of time you had that discussion?

4 A No.

5 Q And could you please tell us exactly -- did  
6 this discussion occur immediately before they were brought  
7 out or was it some time during the course of the proceedings  
8 on April 12th, after they had already been brought out?

9 A I don't remember that.

10 Q Can you please tell us what you said to Mr.  
11 Rovendro and what Mr. Rovendro said to you?

12 A Well, I can't recall with particular definitiveness as to who said what to whom. I can just tell you that they were upset, both of them, that Mr. Light wasn't there.

16 THE COURT: Who was upset?

17 THE WITNESS: Rovendro and Espinosa. I explained to them that he couldn't be present, that he had another engagement elsewhere, that he had given me an outline of the case and that I was aware of the legal questions in the case and that I thought I could represent them adequately at this proceeding. We then went ahead and discussed the question of the disposition in the case, and I believe that there was a time we came to the bench to discuss whether

2 there should be a trial or a plea and after some  
3 colloquy at the bench we then returned to the pen  
4 to further discuss what action we should take, whether  
5 we should try the case or whether there should be a  
6 disposition.

7 Q And isn't it a fact that during the morning  
8 of that discussion you had -- you were contemplating proceed-  
9 ing to trial without a jury, and that you so informed me  
10 of that, is that not correct?

11 A I don't remember. To be honest with you, I  
12 really don't remember.

13 Q Let's go to the colloquy -- the discussion  
14 that you had in the pen with Mr. Rovendro that you just  
15 referred to.

16 THE WITNESS: Judge, am I directed to reveal  
17 this conversation between client and attorney? Does  
18 the nature of this proceeding rule that I must  
19 disclose that? Is that your Honor's direction?

20 THE COURT: Yes.

21 THE WITNESS: Well, there was a question  
22 about being able to prove the case, and we discussed  
23 that. They had pleaded guilty to the case in Queens  
24 and here they were being indicted for the same car  
25 as being stolen from New Jersey. The question which

2 then comes to mind is, if they pleaded guilty to  
3 stealing the car in Queens, how could they steal the  
4 same car twice, if it was stolen from New Jersey how  
5 could it be stolen from Queens? Then the question  
6 came up that a prior conversations -- prior conversa-  
7 tions that I was not privy to, and the feeling that  
8 since it was the same car, what would the sentence  
9 be if they pleaded guilty and didn't go to trial?

10 BY MS. O'BRIEN:

11 Q Let's limit our discussion to Mr. Rovendro,  
12 we are not interested in what Mr. Espinosa had stated to you.

13 A I can't do that. I spoke to both of them at  
14 the same time. I didn't draw a distinction. The case  
15 involved them both in the same capacity.

16 Q Did Mr. Rovendro ever tell you that he had  
17 been informed by Mr. Light that Mr. Favorito was going to  
18 somehow get him a concurrent sentence?

19 A I don't think so.

20 Q Did Mr. Espinosa ever make that statement to  
21 you during this conversation?

22 A I don't recollect anybody telling me that.

23 THE COURT: Where did this conversation take  
24 place?

25 THE WITNESS: In the pen adjacent to your

1 Preminger-direct  
2 courtroom, sir. A 151

3 THE COURT: Were both defendants there? I  
4 am referring now to Espinosa and Rovendro.

5 THE WITNESS: Yes, sir.

6 Q Did Mr. Light at any time during your course of  
7 partnership ever tell you that he had received such repre-  
8 sentation from Mr. Favorito?

9           A        I think my discussion with Mr. Light indicated  
10          that at one time the Assistant that was going to try the  
11          case wanted to have it dismissed but that his superior  
12          prevented it from being dismissed.

13 Q But he had never informed you that Mr.  
14 Favorito or any Assistant United States Attorney was going  
15 to somehow get a concurrent sentence or recommend concur-  
16 rency?

17 A I have no recollection of that.

18 Q All right. Did Mr. -- again, did Mr. Rovendro  
19 ever make that statement to you while you were having this  
20 discussion in the pen during the morning of April 2nd, 1973?

21 A I don't remember it.

Q Did Mr. Rovendro, at the time, appear to be concerned that he might get a consecutive sentence; was he concerned over that fact?

25 A He was concerned about the sentence, yes.

Q In other words, he was concerned because he might, in fact, get a consecutive sentence, is that not correct?

A He was concerned about the sentence . That was the discussion, what would the sentence be. Why wasn't Mr. Light here? He said he discussed this with Mr. Light. I was here . He didn't know what the sentence would be .

Q He discussed what with Mr. Light?

A The case.

Q Did he say anything about he would receive a concurrent sentence, that Mr. Light had made such representations to him?

A No . Not that I can remember.

Q What, if anything, did you say to Mr. Rovendro in reply to his concern about a consecutive sentence?

A My advice to Mr. Rovendro was that based upon the colloquy with the Judge, and from what comments the Judge made, both on the record and off, and the nature of the case, was that it seemed to me as though if he gave a sentence, it would be concurrent.

Q Were there any comments made off the record in the absence of a Court Reporter?

A I don't remember. But I know I had a certain feeling about the Judge's attitude toward the case, and

2 something else was said." So, I think that's my best  
3 answer.

4 Q But you were also aware that the Judge had  
5 made the statement to you, I'm reading from Page 8, "I am  
6 addressing myself to both of you," meaning you and Mr.  
7 Landsman, "that you may want to talk to them about it with-  
8 out giving any specific promises of concurrence of sentence,  
9 for one reason among others that it would be very difficult  
10 to do it in this case anyhow because of the tenure, the  
11 tenure, not the tenure, but the length of the sentence these  
12 two are now serving is in limbo," do you remember the Judge  
13 making that statement to you.

14 A Not specifically, no.

15 Q Your testimony is based upon the conversa-  
16 tions that you had with the Court, you arrived at a conclu-  
17 sion that they would probably receive a concurrent sentence,  
18 is that a fair representation of your understanding at the  
19 time?

20 A Yes.

21 Q What did you say to Mr. Rovendro concerning  
22 that?

23 A I told him my opinion.

24 Q What was that, sir?

25 A That based upon what the Judge had said, based

1 upon the type of charges that they were, based upon the  
2 fact that they were really almost -- basically the same  
3 charges for which they had already been serving time, that  
4 in my opinion the sentence would be -- there would probably  
5 be a concurrent sentence.

6  
7 Q Did you promise them a concurrent sentence?

8 A No.

9 Q Had you ever yourself personally received any  
10 promises from Mr. Favorito, myself or anyone in the United  
11 States Attorneys' Office?

12 A No.

13 MS .O'BRIEN: I have no further questions,  
14 your Honor.

15 CROSS-EXAMINATION

16 BY MR. ELEFANT:

17 Q Mr. Preminger, how long are you practicing  
18 law?

19 A Since 1955.

20 Q Have you been engaged in any specific area of  
21 the law as your specialty?

22 A I would say criminal law is my specialty.

23 Q And how many criminal cases have you handled  
24 since you have been in practice?

25 A Over a thousand.

1  
2 THE COURT: I was waiting for some reasonably  
3 conservative figure. You say about a thousand or  
4 more?

5 THE WITNESS: Yes.

6 Q Now, --

7 A That is both as a D.A. and as a --

8 Q Were you also involved on the prosecutorial  
9 side?

10 A Yes, I was.

11 Q For how long a period of time?

12 A Five years.

13 Q And since that time you have been engaged as  
14 a private practitioner, correct?

15 A Yes.

16 Q And you've interviewed many, many clients, is  
17 that correct?

18 A Yes.

19 Q And during the course of these interviews, do  
20 you get a certain feeling about a client's particular feel-  
21 ings, motivations or attitudes when you interview them?

22 A Some times.

23 Q And you testified earlier that you don't  
24 recall any specific mention by Mr. Rovendro that he recalls  
25 receiving a promise that he would receive a concurrent

1 sentence, isn't that correct?

2  
3 A That's right.

4 Q Is it possible he may have mentioned that to  
5 you but you don't specifically recall that?

6 A It's possible.

7 Q All right. And could you discern from Mr.  
8 Rovendro's conduct during the course of your conversations  
9 with him that subjectively he was -- he believed that he  
10 was to receive a concurrent sentence from Judge Rayfiel,  
11 in connection with his State charges, from the interview  
12 that you had with him that day?

13 A No.

14 Q Now, do you recall if he mentioned everything  
15 that Mr. Light had revealed to him or is it possible he may  
16 have omitted telling you what his conversations were with  
17 Mr. Light?

18 A My only recollection regarding Mr. Light's  
19 involvement was that the clients were hostile toward me for  
20 being there; that they expected Mr. Light since he knew the  
21 case, and that they viewed my appearance at this moment as  
22 inopportune.

23 Q Well, I want to refer to some of the minutes,  
24 and I know you don't recall exactly all the minutes, but it  
25 seems from reading the minutes that at one particular time

1  
2 that's the way it happened.

3 MS. O'BRIEN: No further questions, your  
4 Honor.

5 THE COURT: You may step down.

6 (Witness excused)

7 M A R T I N L I G H T , of 66 Court Street, Brooklyn,  
8 New York, called as a witness, having been first duly  
9 sworn by the Clerk of the Court, testified as follows:

10 DIRECT EXAMINATION

11 BY MS .O'BRIEN:

12 Q Mr. Light, are you the attorney that repre-  
13 sented Mr. Rovendro in this case that was brought before  
14 the Federal Court before Judge Rayfiel?

15 A Yes.

16 Q And did you appear at the arraignment of this  
17 individual, Mr. Rovendro, before Judge Rayfiel on Federal  
18 charges?

19 A I believe so.

20 Q And could you please tell us about how many  
21 occasions you conferred with Mr. Rovendro concerning the  
22 particular Federal case?

23 A It's hard to say as far as the Federal case --  
24 in other words, I can't separate the cases. We met on  
25 numerous occasions when we discussed the Staten Island case,

1 the Queens case, the Federal case.

3 Q So you represented him on all of those cases,  
4 is that correct?

5 A Yes.

6 Q And can you recall how many times that you  
7 met with him and discussed with him, let's say, all three  
8 of these cases?

9 A Could be ten times, could be twenty times.

10 Q And you don't have any specific recollections  
11 of your discussions that concerned the particular charges?

12 A Oh, yes. I remember definitely discussing  
13 this case. I did on numerous occasions.

14 Q Numerous occasions. Did you ever call him up  
15 on the telephone to discuss this case, do you recall that?

16 A I don't recall how it came about. We could  
17 have been in Queens, in court in Queens and we discussed  
18 this case or we could have been over here. I could have  
19 stopped up the -- could have stopped up the office and we  
20 could have discussed it.

21 Q Were you present in court when Mr. Rovendro  
22 and Mr. Espinosa were first brought in on the Magistrate's  
23 warrant on October 12, 1971?

24 A Yes.

25 Q You were present during that time?

A Yes.

Q And at that time did you have a discussion  
4 with any Assistant United States Attorney concerning this  
5 case?

A Well, all I can say is I'm pretty sure I  
7 discussed it because I know my procedure.

Q You don't recall the date that you had any  
9 discussions, is that correct?

A No.

Q Did you have discussions with the Assistant  
12 United States Attorney that was assigned to this case?

A I believe so.

Q Was that Mr. Favorito?

A I had spoken to Mr. Favorito on several  
16 occasions. I don't recall if he actually handled the  
17 arraignment before the Magistrate or not.

Q I see. How many times did you meet in person  
19 with Mr. Favorito?

A I'd only be guessing. It would be three,  
21 it could be nine. Several times.

Q Did you ever have telephone conversations  
23 with Mr. Favorito concerning this case?

A Yes, several times.

Q Could you please tell us what the instance

1 of the conversations that you had with Mr. Favorito was?

2  
3 A At the arraignment before the Magistrate, I  
4 was a little upset because I couldn't believe that they were  
5 being arraigned for the same car here that they were arrested  
6 for in Queens.

7 Q Did you bring this concern to the attention  
8 of Mr. Favorito?

9 A Well, whoever I spoke to. If it was him, I  
10 remember speaking -- in fact, I even argued with the  
11 Magistrate how he could set a \$10,000 surety bond on this  
12 case.

13 Q Let's get to the discussions that you had  
14 with Mr. Favorito.

15 A Now, I spoke to Mr. Favorito on several  
16 occasions in reference to this case. I said they are being  
17 charged with a one count indictment for stealing a car from  
18 New Jersey, or transporting it in interstate when it's my  
19 understanding that they were arrested at Kennedy Airport  
20 for stealing a few cars from the parking lot.

21 So, Mr. Favorito stated to me that I should  
22 get a transcript of the case in Queens showing the disposi-  
23 tion, showing the indictment and the charges. And he  
24 wanted -- because at first they thought it was different  
25 cars. I think Mr. Favorito said he was arrested for the

2 stealing of a Cadillac. So, I said, no, it was also a  
3 Buick. So I got the papers, which I discussed with Mr.  
4 Favorito and he said that he would take it up to his  
5 superiors to see if they will dismiss the indictment.  
6 Being it's the identical car in Queens. And Mr. Favorito  
7 came back to me and said he spoke to Mr. Boyd and Mr. Boyd  
8 refuses to dismiss it.

9 Q Did Mr. Favorito ever tell you that this was  
10 a case that they were interested in getting a paper convic-  
11 tion, a conviction on paper, did he ever make that statement  
12 to you?

13 A I don't recall. I may have taken it upon  
14 myself and said it to the defendant.

15 Q Did Mr. Favorito say this?

16 A I don't recall him saying that.

17 Q Did Mr. Favorito ever tell you that he would  
18 recommend that the sentence run concurrent with the State  
19 sentence?

20 A No.

21 Q Did he ever tell you or lead you to believe  
22 in any manner, shape or form that this sentence would be --  
23 would run concurrent with the State sentence?

24 A That was our feeling. Mr. Preminger and  
25 myself's feeling. Mr. Favorito never said that.

1 Q He never said that?

2 A No.

3 Q All right. Were you present on April 17,  
4 1972 in this court before Judge Rayfield?

5 A What date was that?

6 Q April 17, 1972.

7 A For what purpose? I don't recall the date.  
8 If you would tell me what the proceeding was --

9 Q This was a date that was originally scheduled  
10 as a trial date.

11 A Possibly.

12 Q All right. Do you recall appearing on behalf  
13 of Mr. Rovendro in 1972?

14 A I appeared many times. I don't have a  
15 recollection of that exact date.

16 Q Do you recall appearing and making a motion  
17 to have the case dismissed on the grounds of double jeopardy  
18 before Judge Rayfield?

19 A I think we discussed it with Mr. Favorito  
20 and I think we may have made it orally.

21 Q You made the -- do you recall making an oral  
22 motion before Judge Rayfield?

23 A Yes.

24 Q All right. Now, on this occasion did you

25

1 have an occasion to discuss this case with Mr. Rovendro?

2  
3 A Every time I was with him in Federal Court  
4 or on other occasions we discussed the case.

5 Q On this occasion, the day that you appeared  
6 to -- the day that you made a motion to dismiss on the  
7 grounds of double jeopardy, now, on this day did you tell  
8 Mr. Rovendro that you could get this case to run concurrent  
9 with the State case? Did you ever tell him that? .

10 A I'm pretty sure I told him on many occasions  
11 that there should be no problem, that the sentence should  
12 be together.

13 Q Did you ever tell him that Mr. Favorito had  
14 promised you that this would run concurrent?

15 A No.

16 Q You never told him that?

17 A No.

18 Q Would you tell us in your own words what you  
19 did tell him about the sentence?

20 A Well, my feeling of this case was, first of  
21 all, I was very --

22 Q We are interested in what you told him.

23 A I told him, I said, I can't understand how  
24 they could have an indictment in this case to begin with  
25 on a '68 Buick which was stolen months before, but be that

1 as it may, you are indicted. I don't know what the point  
2 is, I don't know what they are looking for or what they want.  
3 The question of double jeopardy came up.

4 Q What did you say about double jeopardy?

5 A Technically I don't think it fit into  
6 the category of double jeopardy.

7 Q Did you tell him this?

8 A I think we discussed it. I don't know the  
9 exact words. I said, I think that if we went to trial my  
10 honest opinion I thought we could win the case.

11 Q You told him this?

12 A We discussed about going to trial because  
13 there is no --

14 Q Did you tell him that you could win the case?

15 A You can't guarantee anything.

16 Q What did you tell him?

17 A I said, "I think if we go to trial on this  
18 case we have a good chance to win this case, if you want to  
19 go through a trial. But my feeling, I don't see how you  
20 can get hurt on this case sentence-wise." So, sometimes  
21 it's -- the defendant rather not go through the time  
22 or whatever -- I was going to say time and expense of a  
23 trial. In this case, we were assigned.

24 Q Could you please tell us to the best of your

2 memory your exact words concerning the likelihood of  
3 concurrency?

4 A Well, it was just a feeling that you have  
5 being an attorney.

6 Q Did you tell him this, that it was a feeling?

7 A I don't think those words, I said, "From my  
8 experience in this type of case I can't see you getting  
9 hurt, it's an automobile case, a '68 Buick, one car which  
10 you pleaded guilty to, you are doing three years in the  
11 State. I don't see how you can get any additional time.  
12 That's my feeling."

13 Q Did you ever guarantee that he would not get  
14 additional time?

15 A No.

16 Q Did you ever tell him of the prospect at  
17 least of a consecutive sentence?

18 A I may have mentioned it, but the leanings and  
19 feelings were towards a concurrent, so, you know, my feeling  
20 was that he would get a concurrent sentence, a year concur-  
21 rent or two year concurrent.

22 Q And you conveyed this feeling to him?

23 A Yes.

24 Q And did you convey it in any stronger terms  
25 other than a feeling?

1  
2 A I never guaranteed him and I never told him  
3 that Mr. Favorito guaranteed it, but after discussing the  
4 case with my partner, Mr. Preminger, who took the plea, and  
5 he told me it was his feeling from the discussions had with  
6 the Judge and the United States Attorney, that all impres-  
7 sions and the indication is that he was going to get a con-  
8 current. So I says, "Good, then you know, you took the  
9 plea, it was good."

10 MS. O'BRIEN: I have no further questions.

11 CROSS-EXAMINATION

12 BY MR. ELEFANT:

13 Q Did you tell Mr. Rovendro that you were in  
14 conversation with Mr. Favorito concerning this case? Did  
15 he understand that you were talking to Mr. Favorito --

16 A About trying to get the case dismissed.

17 Q Correct, right.

18 A Yes.

19 Q And did you indicate to him that you had  
20 discussed the entire matter with Mr. Favorito?

21 A I discussed it with Mr. Rovendro and said,  
22 it was -- I was pointing out, in fact I got the papers from  
23 Queens from the court, certified copies showing that the  
24 '68 Buick that he's charged with in this jurisdiction he was  
25 charged with in Queens.

2 Q At any time thereafter did you have any further  
3 discussions with Mr. Light concerning this double jeopardy  
4 issue?

5 A There may have been conversation -- a conver-  
6 sation where I felt that we still were in sound legal  
7 ground and that we would plan to proceed with the trial of  
8 the case.

9 Q So after you had made your conclusion based  
10 upon your legal research on this double jeopardy issue, had  
11 you ever promised Mr. Light that you would dismiss the  
12 indictment?

13 A No, I don't believe I ever promised I would  
14 dismiss the indictment.

15 Q And again, after this conclusion, after legal  
16 research on the double jeopardy grounds, did you ever tell  
17 him that you could, in some way, obtain a concurrent sentence  
18 for Mr. Rovendro with his State Court sentence?

19 A I don't believe I ever said that to Mr. Light  
20 or any other attorney.

21 Q Did you ever tell him that this was a paper  
22 conviction?

23 A I never used those words.

Q Did you use any words to that effect, that  
you were only interested in getting a conviction on paper

1 and didn't care if the sentence was consecutive or concurrent?

2  
3 A I would never have said that. This was a  
4 significant case in the Office.

5 Q This was considered by you a significant case,  
6 is that right?

7 A Yes, it was.

8 Q And isn't it a fact that at any time that you  
9 were called to be prepared for trial you were in fact pre-  
10 pared for trial?

11 A I was.

12 Q And were you prepared for trial on April 17,  
13 1972?

14 A I was so prepared.

15 Q And you conveyed your preparedness to defense  
16 counsel on that day?

17 A I did.

18 Q And to the Court that day?

19 A I did.

20 THE COURT: Did your research involve the  
21 question of double jeopardy?

22 THE WITNESS: Yes, it did.

23 Q Isn't it a fact that your decision to dismiss  
24 the indictment or not, on double jeopardy grounds, was to  
25 be made solely upon the legal issue of did double jeopardy

2 apply or not?

A 169

3 A Yes, that was our conversation. We were con-  
4 cerned about the double jeopardy issue and once we were  
5 satisfied that we could successfully turn back any motion on  
6 double jeopardy, we were prepared to proceed.

7 Q And that with the exclusion of double jeopardy  
8 issue, is it not a fact that you had not even considered  
9 dismissing this indictment, is that correct?

10 A That's correct.

11 Q And did you ever make any statements concern-  
12 ing the sentence to Mr. Light or Mr. Preminger or anyone at  
13 any time?

14 A Not to my recollection, no.

15 MS. O'BRIEN: I have no further questions.

16 CROSS-EXAMINATION

17 BY MR. ELEFANT:

18 Q Mr. Favorito, would you have notes concerning  
19 any conversation --

20 THE COURT: Suppose you get a bit closer, Mr.  
21 Elefant.

22 Q Do you have any notes in your file which would  
23 indicate any conversations you had with any of Mr. Rovendro's  
24 attorneys in this matter?

25 A Any notations I would have made would have

## AFFIDAVIT OF MAILING

STATE OF NEW YORK  
COUNTY OF KINGS } ss  
EASTERN DISTRICT OF NEW YORK

LYDIA FERNANDEZ

being duly sworn,

deposes and says that he is employed in the office of the United States Attorney for the Eastern District of New York.

That on the 30th day of October 1975 he served ~~copy~~ two copies of the within Government's Appendix

by placing the same in a properly postpaid franked envelope addressed to:

Martin Elefant, Esq.  
16 Court Street  
Brooklyn, N. Y. 11241

and deponent further says that he sealed the said envelope and placed the same in the mail chute drop for mailing in the United States Court House, Washington Street, Borough of Brooklyn, County of Kings, City of New York.

*Lydia Fernandez*  
LYDIA FERNANDEZ

Sworn to before me this

30th day of October 19 75

*John J. Morgan*  
JOHN J. MORGAN  
Notary Public, State of New York  
No. 24-1501966  
Qualified in Kings County  
Commission Expires March 30, 1977